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Presidential Documents

Title 3—

The President

Proclamation 10106 of October 27, 2020

Adjusting Imports of Aluminum Into the United States

By the President of the United States of America

A Proclamation

1. On January 19, 2018, the Secretary of Commerce (Secretary) transmitted to me a report on his investigation into the effect of imports of aluminum articles on the national security of the United States under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). The Secretary found and advised me of his opinion that aluminum articles were being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States.

2. In Proclamation 9704 of March 8, 2018 (Adjusting Imports of Aluminum Into the United States), I concurred in the Secretary's finding that aluminum articles were being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States, and decided to adjust the imports of aluminum articles, as defined in clause 1 of Proclamation 9704, by imposing a 10 percent ad valorem tariff on such articles imported from most countries. I further stated that any country with which we have a security relationship is welcome to discuss with the United States alternative ways to address the threatened impairment of the national security caused by imports from that country, and noted that, should the United States and any such country arrive at a satisfactory alternative means to address the threat to the national security such that I determine that imports from that country no longer threaten to impair the national security, I may remove or modify the restriction on aluminum articles imports from that country and, if necessary, adjust the tariff as it applies to other countries as the national security interests of the United States require.

3. In Proclamation 9893 of May 19, 2019 (Adjusting Imports of Aluminum Into the United States), I noted that the United States had successfully concluded discussions with Canada on satisfactory alternative means to address the threatened impairment of the national security posed by aluminum imports from Canada. In particular, the United States agreed on a range of measures with Canada that were expected to allow imports of aluminum from Canada to remain stable at historical levels without meaningful increases, thus permitting the domestic capacity utilization to remain reasonably commensurate with the target level recommended in the Secretary's report. These included measures to monitor for and avoid import surges.

4. In light of this agreement, I determined that, under the framework in the agreement established with Canada, imports of aluminum from Canada would no longer threaten to impair the national security, and thus I decided to exclude Canada from the tariff proclaimed in Proclamation 9704, as amended. I noted that the United States would monitor the implementation and effectiveness of the measures agreed upon with Canada in addressing our national security needs, and that I may revisit this determination as appropriate.

5. In Proclamation 10060 of August 6, 2020 (Adjusting Imports of Aluminum Into the United States), I noted that imports of non-alloyed unwrought

aluminum from Canada had increased substantially following my decision to exclude, on a long-term basis, Canada from the tariff proclaimed in Proclamation 9704. I further noted that this surge in imports coincided with a decrease in imports of these articles from other countries and threatened to harm domestic aluminum production and capacity utilization. In light of these circumstances, I determined that it was necessary and appropriate to re-impose the 10 percent ad valorem tariff proclaimed in Proclamation 9704, as amended, on imports of non-alloyed unwrought aluminum articles from Canada.

6. The United States has held consultations with Canada regarding exports of non-alloyed unwrought aluminum from Canada to the United States. On the basis of these consultations, the United States expects that exports of these articles from Canada to the United States will decrease significantly in the remaining months of 2020, from a monthly average of approximately 154,000 metric tons in the first 7 months of this year to a monthly average of approximately 77,000 tons in September through December. This 50 percent decrease in the volume would reduce United States imports of non-alloyed unwrought aluminum from Canada to a level below the average of monthly imports of these articles from Canada in any calendar year in the past decade, thus alleviating the threatened harm to domestic aluminum production and capacity utilization posed by the previous surge in imports of these articles.

7. In light of these changed circumstances, and in view of the measures previously agreed upon with Canada to address the threatened impairment of the national security posed by aluminum imports from Canada, as described in Proclamation 9893, I have determined that imports of aluminum from Canada will no longer threaten to impair the national security, and thus I have decided to reinstate Canada's exclusion from the tariff on these articles proclaimed in Proclamation 9704, as amended. As specified in this proclamation, I may re-impose the tariff proclaimed in Proclamation 9704 on imports of non-alloyed unwrought aluminum from Canada in the event that the volume of imports of these articles from Canada in the remaining months of 2020 exceeds the quantities that the United States expects will be exported from Canada to the United States during this period. The United States and Canada expect to hold further consultations in December 2020 to discuss the state of aluminum trade between the two countries in light of trade patterns in the last 4 months of 2020 and expected market conditions in 2021.

8. The United States will continue to monitor the implementation and effectiveness of the measures agreed upon with Canada in addressing our national security needs, as described in Proclamation 9893, both with respect to imports of non-alloyed unwrought aluminum and imports of other aluminum articles.

9. Section 232 of the Trade Expansion Act of 1962, as amended, authorizes the President to adjust the imports of an article and its derivatives that are being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.

10. Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483), authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTSUS) the substance of statutes affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States of America, including section 232 of the Trade Expansion Act of 1962, as amended, section 301 of title 3, United States Code, and section 604 of the Trade Act of 1974, as amended, do hereby proclaim as follows:

(1) Clause 2 of Proclamation 9704, as amended, is further amended in the second sentence by deleting ''and'' before ''(f)'' and inserting before the period at the end: '', and (g) on or after 12:01 a.m. eastern daylight time on September 1, 2020, from all countries except Argentina, Australia, Canada, and Mexico.''.

(2) In order to establish the removal of the additional duty rate on imports of non-alloyed unwrought aluminum from Canada, subchapter III of chapter 99 of the HTSUS is modified as provided in the Annex to this proclamation.

(3) The Secretary, in consultation with the United States Trade Representative, shall continue to monitor imports of aluminum articles, in particular imports of non-alloyed unwrought aluminum from Canada. In the event that imports of non-alloyed unwrought aluminum from Canada exceed 105 percent of the volumes set forth below for any month, I will consider re-imposing the tariff proclaimed in Proclamation 9704 to imports of these articles from Canada, which may include retroactive application to articles entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on September 1, 2020. The volumes are: 83,000,000 kilograms for September 2020; 70,000,000 kilograms for October 2020; 83,000,000 kilograms for November 2020; and 70,000,000 kilograms for December 2020. In the event that imports of non-alloyed unwrought aluminum from Canada exceed 105 percent of the volumes above for any month, I may consider whether the volume stipulated for the following month is reduced by the amount of the excess in making my determination whether to re-impose the tariff. I may also consider re-imposing the tariff proclaimed in Proclamation 9704 to imports of these articles from Canada based on the outcome of consultations between the United States and Canada in December 2020 and expected market conditions in 2021.

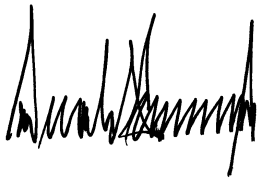
(4) The modifications made by clause 1 of this proclamation and the Annex to this proclamation shall be effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on September 1, 2020, and shall continue in effect, unless such actions are expressly reduced, modified, or terminated.

(5) Imports of non-alloyed unwrought aluminum articles from Canada provided for in subheading 7601.10, except any articles that are eligible for admission under ''domestic status'' as defined in 19 CFR 146.43, that are admitted into a United States foreign trade zone on or after 12:01 a.m. eastern daylight time on September 1, 2020, shall continue to be admitted only as ''privileged foreign status'' as defined in 19 CFR 146.41, and shall not be subject upon entry for consumption on or after such time and date to the duty treatment provided for in heading 9903.85.21, unless and until heading 9903.85.21 becomes applicable to these articles. Imports of non-alloyed unwrought aluminum articles from Canada provided for in subheading 7601.10, admitted into a United States foreign trade zone before 12:01 a.m. eastern daylight time on September 1, 2020, under ''privileged foreign status'' as defined in 19 CFR 146.41, shall remain subject upon entry for consumption on or after such time and date to the additional 10 percent ad valorem rate of duty imposed by Proclamation 9704, as amended.

(6) In the event that I decide, as described in clause 3 of this proclamation, to re-impose the tariff proclaimed in Proclamation 9704 to imports of non-alloyed unwrought aluminum from Canada, including possible retroactive application of the tariff, no drawback shall be available with respect to such duties imposed.

(7) Any provision of previous proclamations and Executive Orders that is inconsistent with the actions taken in this proclamation is superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of October, in the year of our Lord two thousand and twenty, and of the Independence of the United States of America the two hundred and forty-fifth.



Billing code 3295–F1–P

ANNEX

TO MODIFY CERTAIN PROVISIONS OF CHAPTER 99 OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on September 1, 2020, and until such time as further modified, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by striking subdivision (iv) of U.S. note 19(a) and inserting in its place the following:

"

(iv) Heading 9903.85.21 provides the ordinary customs duty treatment for unwrought aluminum, non-alloyed, provided for in subheading 7601.10 that is the product of Canada, entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on August 16, 2020, through 12:00 a.m. on September 1, 2020, and during any subsequent period of effectiveness that may be provided under the terms of this note. Heading 9903.85.21 shall not be used for unwrought aluminum, non-alloyed, provided for in subheading 7601.10 that is the product of Canada, entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. on September 1, 2020, unless and until the President provides that heading 9903.85.21 will again be utilized for imports of these products, including for possible retroactive utilization. For any such products that are eligible for special tariff treatment under any of the free trade agreements or preference programs listed in general note 3(c)(i) to the tariff schedule, the duty provided in heading 9903.85.21, when applicable to imports of these products, shall be collected in addition to any special rate of duty otherwise applicable under the appropriate tariff subheading, except where prohibited by law. Goods for which entry is claimed under a provision of chapter 98 and which are subject to the additional duty prescribed in heading 9903.85.21, when such additional duty is applicable, shall be eligible for and subject to the terms of such provisions and applicable CBP regulations, except that duties under subheading 9802.00.60 shall be assessed based upon the full value of the imported article. No claim for entry or for any duty exemption or reduction shall be allowed for the aluminum products enumerated in this paragraph under a provision of chapter 99 that may set forth a lower rate of duty or provide duty-free treatment, taking into account information supplied by CBP, but any additional duty prescribed in any provision of this subchapter or subchapter IV of chapter 99 shall be imposed in addition to the duty in heading 9903.85.21 when it is applicable.

"

[FR Doc. 2020–24200

Filed 10–29–20; 8:45 a.m.]

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Presidential Documents

Title 3—

The President

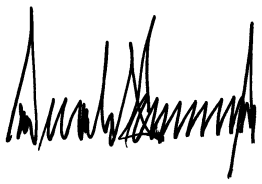
Memorandum of October 14, 2020

Delegation of Authority Under Section 404(c) of the Child Soldiers Prevention Act of 2008

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Secretary of State the authority under section 404(c)(1)of the Child Soldiers Prevention Act of 2008 (CSPA)(22 U.S.C. 2370c–1 (c)(1)), to waive the application of the prohibition in section 404(a)of the CSPA with respect to Sudan and Mali, and to make the determinations and certifications necessary for such waivers. I hereby also delegate to the Secretary of State the authority under section 404(c)(2) of the CSPA to notify the appropriate congressional committees of such waivers and the accompanying Memorandum of Justification for such waivers.

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



THE WHITE HOUSE,
Washington, October 14, 2020

[FR Doc. 2020–24246
Filed 10–29–20; 8:45 am]
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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 247

[FNS–2019–0006]

RIN 0584–AE66

Commodity Supplemental Food Program: Implementation of the Agriculture Improvement Act of 2018

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Final rule.

SUMMARY: Through this final rule, the U.S. Department of Agriculture's (the Department or USDA) Food and Nutrition Service (FNS) is codifying a revised statutory requirement included in the Agriculture Improvement Act of 2018 (2018 Farm Bill). Section 4102 of the 2018 Farm Bill established new Commodity Supplemental Food Program (CSFP) certification requirements..

DATES: This rule is effective October 30, 2020.

FOR FURTHER INFORMATION CONTACT: Katie Treen, Program Analyst, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Suite 3043, Alexandria, Virginia 22314, 703–305–2674 or email *katie.treen@usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion of Final Rule

This Final Rule codifies statutory requirements included in section 4102 of the Agriculture Improvement Act of 2018 (Pub. L. 115–334, the 2018 Farm Bill). Section 4102 established a statutory definition for the term ''certification period'' and established that certification periods for CSFP participants must be not less than one year and not more than three years. This final rule revises 7 CFR 247.16 to include this provision.

This rule also revises 7 CFR 247 per section 4102 of the Agriculture Act of 2014 (Pub. L. 113–79, the 2014 Farm Bill), which amended CSFP eligibility requirements and phased out individuals who do not meet the new requirements. This provision was implemented through a previous final rule, *Commodity Supplemental Food Program (CSFP): Implementation of the Agricultural Act of 2014* (79 FR 38748), published on July 9, 2014. As of February 2020, the phase out of individuals who are not eligible for CSFP was completed. Thus this rule amends program regulations at 7 CFR part 247 to remove all remaining references to women, infants, and children.

Lastly, this rule amends citations that were revised during the previous final rule, *Requirements for the Distribution and Control of Donated Foods—The Emergency Food Assistance Program: Implementation of the Agricultural Act of 2014* (81 FR 23085), published on April 19, 2016, which amended Food Distribution regulations at 7 CFR part 250. Accordingly, 7 CFR part 247 will be amended to reflect any updated references to 7 CFR part 250.

The Administrative Procedures Act (APA) at 5 U.S.C. 553(a)(2) specifically exempts rules involving grants and benefits from notice-and-comment requirements, giving the Department the authority to issue final rules in grants and benefits programs, like CSFP. Therefore, the Department is issuing this rule as a final rule without a comment period.

II. Certification Periods

A. Background

Section 4102 of the 2018 Farm Bill establishes a statutory definition for the term ''certification period'' as ''the period during which a participant in the commodity supplemental food program in a State may continue to receive benefits under the commodity supplemental food program without a formal review of the eligibility of the participant.'' The ''certification period'' definition will be amended in 7 CFR 247.1 to reflect the statutory definition.

Additionally, Section 4102 of the 2018 Farm Bill codifies new statutory requirements for CSFP certification periods. Accordingly, FNS is amending CSFP program regulations at 7 CFR 247.16 to reflect the new requirements that certification periods for CSFP participants must be not less than one year and not more than three years. Prior to the enactment of the 2018 Farm Bill, program regulations stipulated that the State agency must establish certification periods that may not exceed six months in length. However, the State agency could authorize local agencies to extend the certification period without a formal review of eligibility for additional six-month periods, as long as the conditions outlined in 7 CFR 247.16(a)(2)(i) and (ii) were met.

This final rule makes the following conforming changes to 7 CFR 247.16(a): (1) Establishes minimum certification periods to be no less than one year but no more than three years for program participants; (2) establishes that if the State agency chooses to establish a certification period that exceeds one year, the State agency must first receive approval from FNS by submitting an updated State Plan. Additionally, 7 CFR 247 is amended by removing all references to women, infants, and children, thus 7 CFR 247.16 is being reorganized.

Under the 2018 Farm Bill and updated program regulations, FNS shall approve a certification period exceeding one year on the condition that on an annual basis, local agencies administering CSFP do two things. Firstly, the local agency must verify the address and continued interest of the participant. Secondly, the local agency must have sufficient reason to determine that the participant still meets the income eligibility standards.

Furthermore, this final rule adds two sub-paragraphs to 7 CFR 247.16(a), in order to clarify 2018 Farm Bill statutory requirements. The first sub-paragraph, 7 CFR 247.16(a)(2), allows eligible CSFP applicants, including individuals on waiting lists, to be provided with a temporary monthly certification to fill any caseload slots resulting from nonparticipation by certified participants. The second sub-paragraph, 7 CFR 247.16(a)(3), establishes that

should a State agency want to allow local agencies to continue providing benefits to individuals once their certification period expires, then individuals must be formally recertified following the application procedures outlined at 7 CFR 247.8.

The 2018 Farm Bill was signed into law on December 20, 2018. The Department determined that prolonging the implementation of this provision would negatively impact State agencies that administer CSFP by delaying their ability to utilize the new flexibility in certification periods. The Department also determined that this provision was self-executing and, therefore, implemented the provision immediately in FY 2019.

B. Implementation Memorandum

On March 8, 2019, FNS released a memorandum titled, *CSFP—Implementation of the Agriculture Improvement Act of 2018* (Pub. L. 115–334), which set forth the changes to the certification period for CSFP participants. The memorandum defined the term ''certification period'' and directed CSFP States agencies to establish new certification periods that are not less than one year but not more than three years. The memorandum instructed CSFP State agencies and ITOs to amend their State Plans and submit them to FNS for review and approval by May 1, 2019. The memorandum required the State Plan amendments to outline the length of the State agency's new certification periods for participants and the procedures for implementation among CSFP local agencies. Lastly, the memorandum notified State agencies that they may permit their local agencies to certify individuals for one-month periods to maximize caseload use and provide temporary CSFP benefits to participants on waiting lists when a regular program participant misses a scheduled distribution.

III. Phase Out of Women, Infants, and Children

Section 4102 of the 2014 Farm Bill amended CSFP eligibility requirements to transition it to a seniors-only program and phase out ineligible participants. Women, infants, and children who were certified and receiving CSFP benefits as of February 2014 under existing program rules, received assistance until they were no longer eligible under the program rules that went into effect on February 6, 2014. On July 9, 2014, FNS published a final rule implementing this provision. All ineligible participants have since phased out of CSFP. This rule amends program regulations at 7 CFR 247 to remove all references to women, infants, and children and to make conforming organizational changes within 7 CFR part 247.

IV. Technical Correction

This rule amends citations that were revised during previous rulemaking. On April 19, 2016, the Food Distribution Division published a final rule, *Requirements for the Distribution and Control of Donated Foods—The Emergency Food Assistance Program: Implementation of the Agricultural Act of 2014* (81 FR 23085), which amended Food Distribution regulations at 7 CFR part 250. Accordingly, this rule amends 7 CFR 247 to reflect any updated references to 7 CFR part 250 as a result of previous rulemaking.

V. Procedural Matters

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Executive Order 12866 and 13563

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

This final rule has been determined to be not significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

This rule has been designated as not significant by the Office of Management and Budget, therefore, no Regulatory Impact Analysis is required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial number of small entities. This final rule would not have an impact on small entities because the revised requirement provides more flexibility on the certification period at the local agency level. This lessens the administrative burden previously required by allowing State agencies to extend their certification periods from six months to one to three years.

Executive Order 13771

Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that the cost of planned regulations be prudently managed and controlled through a budgeting process. This final rule is an E.O. 13771 deregulatory action. This rulemaking provides a reduction in the State agency/ITO requirements to certify CSFP participants on an annual basis. This rule lessens the administrative burden previously required by allowing State agencies to extend their certification periods from six months to one to three years.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written Statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of $146 million or more (when adjusted for inflation; GDP deflator source: Table 1.1.9 at *http://www.bea.gov/iTable*) in any one year. When such a Statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $146 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The program is listed in the Catalog of Federal Domestic Assistance under Number 10.558 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a Statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13132.

The Department has determined that this rule does not have Federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a Federalism summary impact Statement is not required.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with USDA Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex or disability. After a careful review of the rule's intent and provisions, FNS has determined that this rule is not expected to have any civil rights impacts or affect the overall level of participation in CSFP.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy Statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. USDA is unaware of any current Tribal laws that could be in conflict with this rule.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. chap. 35; 5 CFR part 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

In accordance with the Paperwork Reduction Act of 1995, this final rule contains information collections that are subject to review and approval by the Office of Management and Budget. The provisions discussed in this Final Rule are non-discretionary statutory requirements provided in the 2018 Farm Bill, therefore the Department did not publish a proposed rule with a public comment period for these provisions. However, since some of the provisions contained in this Final Rule have Paperwork Reduction Act (PRA) implications, the Food and Nutrition Service (FNS) is embedding a 60-Day Notice in this Final Rule to request public comments on these provisions. FNS is only requesting comments on the specific PRA implications resulting from this rule; the agency is not requesting comments on the rule itself. The Final Rule will be effective upon publication. The PRA requirements discussed in this rule, with their associated burden, will not be effective until OMB has reviewed and approved the Information Collection Request (ICR) associated with this Final Rule. FNS plans to prepare and submit the ICR after the due date for public comments has passed and FNS has analyzed the comments.

When the information collection requirements have been approved, the Department will publish a separate action in the **Federal Register** announcing OMB approval.

Title: Food Distribution Programs.

OMB Number: 0584–0293.

Expiration Date: July 31, 2023.

Type of Request: Revision of a Currently Approved Collection.

Abstract: This Final Rule codifies statutory requirements included in section 4102 of the Agriculture Improvement Act of 2018 (Pub. L. 115–334, the 2018 Farm Bill). Section 4102 of the 2018 Farm Bill established a statutory definition for the term ''certification period'' and established that certification periods for the Commodity Supplemental Food Program (CSFP) participants must be not less than one year and not more than three years.

Additionally, this rule also revises 7 CFR part 247 per section 4102 of the Agriculture Act of 2014 (Pub. L. 113–79, the 2014 Farm Bill), which amended CSFP eligibility requirements to phase out the participation of pregnant, breastfeeding and postpartum women, infants, and children (referred generally throughout this section as women, infants, and children), transitioning the CSFP to a seniors-only program. This provision was implemented through a previous final rule, *Commodity Supplemental Food Program (CSFP): Implementation of the Agricultural Act of 2014* (79 FR 38748), published on July 9, 2014. The 2014 Farm Bill language was clear and mandatory, leaving no room for discretion. This action was finalized without prior notice or public comment under the authority of 5 U.S.C. 553(a)(2). As of February 2020, the phase out of all women, infants, and children was completed.

State Agencies

This final rule requires some State agencies to amend their State Plans to include the new certification period. Only those State agencies extending their current certification period longer than one year need to make an amendment. The Department believes that an additional fifteen minutes (0.25 hours) should be added to the current 5-hour burden estimate in the currently approved OMB Control Number 0584–0293 Food Distribution Programs, Expiration Date: 7/31/2023, to support State Plan amendments resulting from this change. Going forward, only those State agencies extending their certification period longer than one year will need to make amendments to their State Plans. The initial amendment to the State Plan is a one-time change and State agencies will not have to submit additional information going forward, if they choose to continue in subsequent years with their current certification period. State agencies will only have to submit a State Plan amendment in future years if they decide to change their certification period. The Department estimates that it will take fifteen minutes of a State agency staff person's time to prepare and send this information to FNS if making a change to their certification period. Per current estimates under State Plan Amendments at 7 CFR 247.6(d), under State Agency reporting in OMB Control Number 0584–0293 Food Distribution Programs, Expiration Date: July 31, 2023, approximately 40 State agencies typically make amendments to their State Plans on an annual basis. FNS believes that this change may result in approximately five additional State agencies submitting State Plan amendments to change their certification periods each year going forward. Accordingly, we are adding an

additional 36.25 burden hours to cover future years in the event a State agency decides to adjust their certification period.

Individuals

Currently FNS has approval under OMB Control Number 0584–0293 for individuals applying and certifying for CSFP. The individuals are broken into two groups, the elderly and women, infants, and children. CSFP certification periods for all CSFP participants are under 7 CFR 247.16. The currently approved collection includes 7,500 total burden hours for the application and recertification of women, infants, and children. The 2014 Farm Bill allowed women, infants, and children who were participating in the program on the date the law was enacted to continue on the program until their eligibility expired under the program rules in effect on that date. As of February 2020, all women, infants, and children have been phased out of the program, thus the burden for the application and recertification for these individuals needs to be removed from the collection.

As a result of the phase out of this population from CSFP, these 7,500 caseload slots have been reallocated to the population of elderly CSFP participants. Additionally, CSFP participation has increased in recent fiscal years (FY) due to the additional availability of program resources. In FY 2019 CSFP average annual participation was approximately 702,500. Therefore, FNS finds it reasonable to adjust the estimated number of elderly individuals to 702,500 for the application (7 CFR 247.8) and recertification (7 CFR 247.16) of elderly individuals. Per the final rule at 7 CFR 247.16, CSFP participants must provide verification to their local agency on an annual basis, regardless of the certification period that the State agencies impose on the local agencies. Therefore, elderly participants will provide information once per year, reducing the estimated responses from two to one. FNS estimates that this yearly contact will continue to take 15 minutes. The updated estimated burden for CSFP individuals is 175,625, which is a decrease of 110,875 from the previously approved burden of 286,500.

The following table reflects the burden associated with this rule in the existing burden collection in accordance with the Paperwork Reduction Act.

Affected public: State agencies.

Estimated number of respondents: 45.

Estimated total annual response per respondent: 1.

Estimated total annual responses: 45.

Estimated time per respondent: 5.25.

Estimated Total Annual Burden on Respondents: 236.25.

Affected public: CSFP Participants.

Estimated number of respondents: 702,500.

Estimated total annual response per respondent: 1.

Estimated total annual responses: 702,500.

Estimated time per respondent: 0.25.

Estimated Total Annual Burden on Respondents: 175,625.

Total Reporting Hours Resulting from Proposed Rule: 175,861.

Currently Approved Burden Hours in OMB #0584–0293: 1,161,377.

Estimated Burden Hours Including Hours from Final Rule: 1,043,038.

Burden Hour Difference: −118,339.

Sec. of Regs/authority	Respondent type	Title	Estimate number of respondents	Estimate number of responses per respondent	Total annual responses	Estimate total hours per response	Estimate total burden	Currently approved burden	Program change due to rule making	Adjustment	Net change
Affected Public: State Agencies											
247.6(d)	State agency	State Plan Amendment.	45	1	45	5.25	236.25	200	36.25	0	36.25
Affected Public: Individuals											
247.8 & 247.16(a)	Elderly	Applications/Recertification.	702,500	1	702,500	0.25	175,625	286,500	−110,875	0	−110,875
247.8 & 247.16(a)	Women, infants and children.	Applications/Recertification.	0	0	0	0	0	7,500	−7,500	0	−7,500
Individual Total			702,500	1	702,500	0.25	175,625	294,000	−118,375	0	−118,375
Total Reporting			702,545	1	702,545	0.25	175,861	294,200	−118,339		−118,339

	Estimate number of respondents	Number of responses per respondent	Total annual responses	Estimate total hours per response	Estimate total burden	Currently approved burden #0584–0293	Change in burden
Reporting	752,675.00e	2.42	1,824,554.57	0.15	272,291.13	390,630	−118,339
Recordkeeping	26,970.00	56.3	1,518,341.46	0.51	770,747.03	770,747.03	0
Total	752,675.00	4.44	3,342,896.03	0.31	1,043,038.16	1,161,377.03	−118,339

E-Government Act Compliance

The Department is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 247

Definitions, Purpose and Scope, Agreements, State and local agency responsibilities, State Plan, Individuals applying to participate in CSFP, Rights and responsibilities, Other public assistance programs, Certification period, Nutrition education, Dual participation, Allowable uses of administrative funds and other funds, Storage and Inventory of commodities, Reports and recordkeeping, and Claims.

Accordingly, 7 CFR part 247 is amended as follows:

PART 247—COMMODITY SUPPLEMENTAL FOOD PROGRAM

■ 1. The authority citation for part 247 continues to read as follows:

Authority: Sec. 5, Pub. L. 93–86, 87 Stat. 249, as added by Sec. 1304(b)(2), Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c note); sec. 1335, Pub. L. 97–98, 95 Stat. 1293 (7 U.S.C. 612c note); sec. 209, Pub. L. 98–8, 97 Stat.

35 (7 U.S.C. 612c note); sec. 2(8), Pub. L. 98–92, 97 Stat. 611 (7 U.S.C. 612c note); sec. 1562, Pub. L. 99–198, 99 Stat. 1590 (7 U.S.C. 612c note); sec. 101(k), Pub. L. 100–202; sec. 1771(a), Pub. L. 101–624, 101 Stat. 3806 (7 U.S.C. 612c note); sec 402(a), Pub. L. 104–127, 110 Stat. 1028 (7 U.S.C. 612c note); sec. 4201, Pub. L. 107–171, 116 Stat. 134 (7 U.S.C. 7901 note); sec. 4221, Pub. L. 110–246, 122 Stat. 1886 (7 U.S.C. 612c note); sec. 4221, Pub. L. 113–79, 7 U.S.C. 612c note).

■ 2. In § 247.1:
■ a. Remove the definitions of ''Breastfeeding women,'' ''Children,'' ''Infants,'' ''Postpartum women,'' and ''WIC Program.''
■ b. Revise the definitions ''Certification Period,'' and ''Dual participation''.

The revisions read as follows:

§ 247.1 Definitions.

* * * * *

Certification period means the period during which a CSFP participant may continue to receive benefits under CSFP without a formal review of eligibility.

* * * * *

Dual participation means the simultaneous participation by an individual in CSFP at more than one distribution site.

* * * * *

§ 247.2 [Amended]

■ 3. In § 247.2(a), remove the third sentence.

§ 247.4 [Amended]

■ 4. In paragraph § 247.4(d), remove ''§ 250.12(c)'' and add in its place ''§ 250.4'' and in the last sentence add the word ''into'' after the word ''entering''.

§ 247.5 [Amended]

■ 5. In § 247.5(b)(8), remove ''and with the WIC State agency, unless no women, infants, and children remain enrolled in CSFP in the State''

■ 6. In § 247.6:
■ a. In paragraph (c)(2), remove the phrase ''to be used for women, infants, and children, if applicable,''.
■ b. In paragraph (c)(8), remove '', including, if applicable, collaboration with the State WIC agency and a copy of the agreement signed with the State WIC agency to accomplish this''.
■ c. Add paragraph (c)(12).

The revision reads as follows:

§ 247.6 State Plan.

* * * * *

(c) * * *

(12) The length of the State agency's certification period.

* * * * *

■ 7. In § 247.8:
■ a. Revise paragraph (a); and
■ b. Amend paragraph (b) by removing ''I may not receive both CSFP and WIC benefits simultaneously, and''.

The revision should read as follows:

§ 247.8 Individuals applying to participate in CSFP.

(a) *What information must individuals applying to participate in CSFP provide?* To apply for or to be recertified for CSFP benefits, the applicant or caretaker of the applicant must provide the following information on the application:

(1) Name and address, including some form of identification for each applicant;

(2) Household income;

(3) Household size; and

(4) Other information related to eligibility, such as age

* * * * *

■ 8. Revise § 247.9 to read as follows:

§ 247.9 Eligibility requirements.

(a) *Who is eligible for CSFP?* To be eligible for CSFP, individuals must be at least 60 years of age and meet the income eligibility requirements outlined in paragraph (b) of this section.

(b) *What are the income eligibility requirements for CSFP applicants?* The State agency must use a household income limit at or below 130 percent of the Federal Poverty Income Guidelines. Elderly persons in households with income at or below this level must be considered eligible for CSFP benefits (assuming they meet other requirements contained in this part). However, elderly persons certified before September 17, 1986 (*i.e.,* under the three elderly pilot projects) must remain subject to the eligibility criteria in effect at the time of their certification.

(c) *When must the State agency revise the CSFP income guidelines to reflect the annual adjustments of the Federal Poverty Income Guidelines?* Each year, FNS will notify State agencies, by memorandum, of adjusted income guidelines by household size at 130 percent and 100 percent of the Federal Poverty Income Guidelines. The memorandum will reflect the annual adjustments to the Federal Poverty Income Guidelines issued by the Department of Health and Human Services. The State agency must implement the adjusted guidelines immediately upon receipt of the memorandum.

(d) *How is income defined and considered as it relates to CSFP eligibility?* (1) Income means gross income before deductions for such items as income taxes, employees' social security taxes, insurance premiums, and bonds.

(2) The State agency may exclude from consideration the following sources of income listed under the regulations for the Special Supplemental Nutrition Program for Women, Infants, and Children at § 246.7(d)(2)(iv) of this chapter:

(i) Any basic allowance for housing received by military services personnel residing off military installations; and

(ii) The value of inkind housing and other inkind benefits.

(3) The State agency must exclude from consideration all income sources excluded by legislation, which are listed in § 246.7(d)(2)(iv)(D) of this chapter. FNS will notify State agencies of any new forms of income excluded by statute through program policy memoranda.

(4) The State agency may authorize local agencies to consider the household's average income during the previous 12 months and current household income to determine which more accurately reflects the household's status. In instances in which the State makes the decision to authorize local agencies to determine a household's income in this manner, all local agencies must comply with the State's decision and apply this method of income determination in situations in which it is warranted.

(e) *What other options does the State agency have in establishing eligibility requirements for CSFP?* (1) The State agency may require that an individual be at nutritional risk, as determined by a physician or by local agency staff.

(2) The State agency may require that an individual reside within the service area of the local agency at the time of application for CSFP benefits. However, the State agency may not require that an individual reside within the area for any fixed period of time.

■ 9. In § 247.12, revise paragraph (a)(2) to read as follows.

§ 247.12 Rights and responsibilities.

(a) * * *

(2) The local agency will make nutrition education available to all participants and will encourage them to participate; and

* * * * *

§ 247.14 [Amended]

■ 10. In § 247.14:
■ a. Remove paragraph (a) and redesignate paragraphs (b) and (c) as (a) and (b).
■ b. In newly redesignated paragraph (a) introductory text, remove the word ''elderly'' wherever it appears.
■ c. In newly redesignated paragraph (a)(3), remove ''Food Stamp'' and add in

its place ''Supplemental Nutrition Assistance''.

■ 11. In § 247.16, revise paragraph (a) to read as follows:

§ 247.16 Certification period.

(a) *How long is the certification period?* (1) *Minimum certification period.* The State agency must establish certification periods that are not less than one year but not more than three years in duration. If the State agency chooses to establish a certification period that exceeds one year, the State must first receive approval from FNS by submitting a State Plan amendment. FNS shall approve State requests for a certification period exceeding one year on the condition that, on an annual basis, local agencies do the following:

(i) Verify the address and continued interest of the participant; and

(ii) Have sufficient reason to determine that the participant still meets the income eligibility standards, which may include a determination that the participant has a fixed income.

(2) *Temporary certification.* An eligible CSFP applicant, including individuals on waiting lists, may be provided with a temporary monthly certification to fill any caseload slot resulting from nonparticipation by certified participants.

(3) *Recertification.* Participants must be recertified following the application procedures outlined at § 247.8 in order to continue receiving program benefits beyond the expiration of their certification period.

* * * * *

§ 247.18 [Amended]

■ 12. In § 247.18:

■ a. Remove paragraph (b)(4) and redesignate paragraphs (b)(5) and (6) as (b)(4) and (5).

■ b. Amend paragraph (c) by removing the word ''adult'' before ''participants'' and removing, ''and, if applicable, to parents or caretakers of infant and child participants. Local agencies are encouraged to make nutrition education available to children, where appropriate''

■ 13. In § 247.19, am:

Amend paragraph (a) by revising the first sentence and paragraph (b) to read as follows: § 247.19 Dual participation.

(a) *What must State and local agencies do to prevent and detect dual participation?* The State agency must work with local agencies to prevent and detect dual participation. * * *

(b) *What must the local agency do if a CSFP participant is found to be committing dual participation?* A participant found to be committing dual participation must be discontinued from participation at more than one CSFP site. In accordance with § 247.20(b), if the dual participation resulted from the participant or caretaker of the participant making false or misleading statements, or intentionally withholding information, the local agency must disqualify the participant from CSFP, unless the local agency determines that disqualification would result in a serious health risk. The local agency must also initiate a claim against the participant to recover the value of CSFP benefits improperly received, in accordance with § 247.30(c). Whenever an individual's participation in CSFP is discontinued, the local agency must notify the individual of the discontinuance, in accordance with § 247.17. The individual may appeal the discontinuance through the fair hearing process, in accordance with § 247.33(a).

§ 247.25 [Amended]

■ 14. In § 247.25(f), remove ''§ 250.15(c)'' and add in its place ''§ 250.17(c)''.

§ 247.28 [Amended]

■ 15. In § 247.28(a), remove ''under'' and add in its place ''in § 250.12 and''.

§ 247.29 [Amended]

■ 16. In § 247.29, amend paragraph (b)(2)(i) by removing ''in each population category (*e.g.,* infants, children, and elderly)''.

§ 247.30 [Amended]

■ 17. In § 247.30(b), remove ''§ 250.15(c)'' in the first place it appears and and add in its place ''§ 250.16(a)'', and remove ''§ 250.15(c)'' in the second place it appears and add in its place ''§ 250.17(c)''.

Pamilyn Miller,

Administrator, Food and Nutrition Service.

[FR Doc. 2020–23760 Filed 10–29–20; 8:45 am]

BILLING CODE 3410–30–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 40, 74, 75, and 150

[NRC–2019–0108]

Availability of NUREG/BR–0006 and NUREG/BR–0007

AGENCY: Nuclear Regulatory Commission.

ACTION: NUREG; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing NUREG/BR–0006, Revision 9, ''Instructions for Completing Nuclear Material Transaction Reports,'' and NUREG/BR–0007, Revision 8, ''Instructions for the Preparation and Distribution of Material Status Reports.'' These NUREG brochures provide guidance for licensees submitting material transaction reports and material status reports to the Nuclear Materials Management and Safeguards System.

DATES: NUREG/BR–0006, Revision 9 and NUREG/BR–0007, Revision 8 and its forms became effective on August 31, 2020.

ADDRESSES: Please refer to Docket ID NRC–2019–0108 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

▪ *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0108. Address questions about Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

▪ *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* NUREG/BR–0006, Rev. 9 ''Instructions for Completing Nuclear Material Transaction Reports,'' is available in ADAMS under Accession No. ML20240A155, and NUREG/BR–0007, Rev 8 ''Instructions for the Preparation and Distribution of Material Status Reports'' is available in ADAMS under Accession No. ML20240A181.

▪ *NRC's Form Library:* NRC Forms 740M, 741, 742 and 742C can be accessed on the NRC Form Library at *https://www.nrc.gov/reading-rm/doc-collections/forms.*

FOR FURTHER INFORMATION CONTACT: Mirabelle Shoemaker, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7363, email: *Mirabelle.Shoemaker@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

A request for comments on Draft NUREG/BR–0006, Rev. 9 (ADAMS Accession No. ML20240A155) and Draft NUREG/BR–0007, Rev 8 (ADAMS Accession No. ML20240A181) was published in the **Federal Register** on August 15, 2019 (84 FR 41644), with a 90-day comment period ending on November 13, 2019. Comments received on NUREG/BR–0006, Rev. 9 and NUREG/BR–0007, Rev. 8 can be found on the Federal Rulemaking website (*https://www.regulations.gov*) under Docket ID NRC–2019–0108.

NUREG/BR–0006 and NUREG/BR–0007 provide instructions for reporting information to the Nuclear Materials Management and Safeguards System, as required by NRC regulations. The NRC has revised these documents to provide additional clarification and examples of nuclear material transaction reports and nuclear material status reports, to aid the licensee community in preparing clear and accurate submittals.

Dated: October 15, 2020.

For the Nuclear Regulatory Commission.

James L. Rubenstone,

Chief, Material Control and Accounting Branch, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2020–23229 Filed 10–29–20; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2018–BT–STD–0005]

RIN 1904–AE35

Energy Conservation Program: Establishment of a New Product Class for Residential Dishwashers

AGENCY: Office of Energy Efficiency and Renewable Energy (EERE), Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE) received a petition from the Competitive Enterprise Institute (CEI) to define a new product class under the Energy Policy and Conservation Act, as amended (EPCA), for standard residential dishwashers with a cycle time for the normal cycle of less than one hour from washing through drying. Based upon its evaluation of the petition and careful consideration of the public comments, DOE granted CEI's petition and proposed a dishwasher product class with a cycle time for the normal cycle of less than one hour. In this final rule, DOE establishes a new product class for standard residential dishwashers with a cycle time for the normal cycle of one hour (60 minutes) or less from washing through drying. DOE's decision to establish the new product class is based on its evaluation of CEI's petition, the comments the Department received in response to the petition and the proposed rule to establish the new product class, as well as additional testing and evaluation conducted by the Department. This rulemaking only sets out the basis for the new product class. DOE intends to determine the specific energy and water consumption limits for the product class in a separate rulemaking.

DATES: The effective date of this rule is November 30, 2020. The incorporation by reference of a certain publication in this final rule is approved by the Director of the Office of the Federal Register as of November 30, 2020.

ADDRESSES: The docket for this rulemaking, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *https://www.regulations.gov.* All documents in the docket are listed in the *https://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: *https://www.regulations.gov/docket?D=EERE-2018-BT-STD-0005.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Ms. Kathryn McIntosh, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–2002. Email: *Kathryn.McIntosh@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE incorporates by reference the following industry standard into 10 CFR part 430: ANSI/AHAM DW–1–2010, Household Electric Dishwashers, (ANSI approved September 18, 2010).

A copy of ANSI/AHAM DW–2010 is available at: Association of Home Appliance Manufacturers, 1111 19th Street NW, Suite 402, Washington, DC 20036, 202–872–5955, or go to *http://www.aham.org.*

For a further discussion of this standard, see section V.N.

I. Summary of the Final Rule

In this final rule, DOE establishes a product class for standard residential dishwashers with a cycle time for the normal cycle of one hour or less from washing through drying. DOE believes that the new product class will offer greater consumer choice within DOE's existing energy and water conservation standards for residential dishwashers and will spur innovation in the design of dishwashers.

Since receipt of the petition, DOE conducted additional testing of dishwasher cycle times, as described in section II.B. of this final rule. As explained in Section II.B., the data show that a dishwasher with a ''Normal'' cycle time of 60 minutes or less is achievable, and that establishing a product class where the ''Normal'' cycle is 60 minutes or less could spur manufacturer innovation to generate additional product offerings to fill the market gap that exists for these products.

In establishing a product class with a ''Normal'' cycle of 60 minutes or less, DOE is creating an opportunity to introduce additional consumer choice in the dishwasher market. Specifically, DOE would be providing consumers the

added option to purchase a standard residential dishwasher with a ''Normal'' cycle of one hour or less for the dishwasher to complete its operation from washing through drying. Consumers would still be able to purchase a dishwasher from the original dishwasher product class that is characterized by a longer ''Normal'' cycle, which often offers a ''Quick'' cycle (often recommended by the manufacturer for washing lightly soiled dishes) that may wash dishes even more quickly but potentially uses more energy or water than the ''Normal'' cycle. The distinction DOE has created through the introduction of this shorter one-hour ''Normal'' cycle product class and the original product class for standard dishwashers rests on the length of the cycle that manufacturers identify as the ''Normal'' cycle.

DOE's decision to establish the one hour ''Normal'' cycle product class is supported by the Department's test data, which indicate that the mean and median energy and water use values of the tested ''Quick'' cycles could meet the current DOE standards and had a mean and median duration of 1.3 hours (80 minutes). Further, ten of those quick cycles had a cycle time of less than one hour. The units selected for testing represent over 95 percent of dishwasher manufacturers and were a representative sample of the current dishwasher market. Based on these results, DOE is confident that, given the opportunity to do so, industry could feasibly develop and produce a standard dishwasher with the capabilities to meet the criteria of this new one hour product class. DOE intends to determine the specific energy and water conservation standards for the new product class, with a ''Normal'' cycle of one hour or less, in a separate rulemaking.

II. Introduction

A. Background

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.,* provides among other things, that ''[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.'' (5 U.S.C. 553(e)) Pursuant to this provision of the APA, CEI petitioned DOE for the issuance of rule establishing a new product class under 42 U.S.C. 6295(q) that would cover dishwashers with a cycle time of less than one hour from washing through drying. (CEI Petition, No. 0006 at p. 1) [1] CEI stated that dishwasher cycle times have become dramatically longer under existing DOE energy conservation standards, and that consumer satisfaction and utility have dropped as a result of these longer cycle times. CEI also provided data regarding the increase in dishwasher cycle time, including data that, according to CEI, correlated increased cycle time with DOE's adoption of amended efficiency standards for dishwashers. (*Id.,* at pp. 2–3)

CEI requested that dishwasher product classes be further divided based on cycle time. CEI asserted that given the significant amount of consumer dissatisfaction with increased dishwasher cycle time, cycle time is a ''performance-related feature'' that provides substantial consumer utility, as required by EPCA for the establishment of a product class with a higher or lower energy use or efficiency standard than the standards applicable to other dishwasher product classes. (CEI Petition, No. 0006 at p. 5) CEI did not specify whether it requested the additional distinction apply to either the standard and compact classes or just the standard class.

CEI also cited 42 U.S.C. 6295(o)(4), which prohibits DOE from prescribing a standard that interested persons have established by a preponderance of the evidence would likely result in the unavailability in the United States in any covered product type (or class) of performance characteristics, features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of DOE's finding. (*Id.,* at p. 4) CEI stated that despite this prohibition, it appears that dishwasher cycle times have been impaired by the DOE standards and that many machines that offered shorter cycle times are no longer available. (*Id.*)

In its petition, CEI suggested a cycle time of one hour or less as the defining characteristic for the new product class for standard dishwashers, because one hour is substantially below the cycle times for all current products on the market. (*Id.,* at p. 5) CEI stated that energy efficiency standards for current products would remain unchanged by the addition of the new product class, and that no backsliding would occur for the energy standards already in place. (*Id.*) Specifically, 42 U.S.C. 6295(o)(1) (''anti-backsliding provision'') prohibits DOE from prescribing a standard that increases the maximum allowable energy use, or in the case of showerheads, faucets, water closets or urinals, water use, or decreases the minimum required energy efficiency, of a covered product. CEI's petition did not suggest specific energy and water use requirements for the new product class, stating that the standards could be determined during the course of the rulemaking. (CEI Petition, No. 0006 at p. 1)

On April 24, 2018, DOE published a notice of receipt of CEI's petition for rulemaking. 83 FR 17768 (April 2018 Notification of Petition for Rulemaking). DOE requested comments on the petition, as well as any data or information that could be used to assist DOE's determination whether to proceed with the petition to create a new product class for standard residential dishwashers. In response to that request, the Department received a wide range of comments in favor of and opposing the creation of a new product class. Upon consideration of those comments, DOE granted CEI's petition and proposed to create a new product class for standard residential dishwashers with a cycle time of one hour or less for the normal cycle. 84 FR 33869 (July 16, 2019) (July 2019 NOPR). DOE addressed the comments received in response to publication of the petition in its July 2019 NOPR. DOE assumed that CEI's request, which did not specify whether it was requesting the additional product class distinction be applied to both standard and compact classes, would apply only to the standard dishwasher class because that class represents the vast majority of dishwasher shipments. *Id.* at 84 FR 33870. In response to the July 2019 NOPR, DOE received comments from industry and dishwasher manufacturers, state agencies and state officials, consumer organizations, utilities, energy efficiency advocates, and individuals. DOE discusses and responds to these comments in section III of this final rule.

In consideration of the comments received during this rulemaking, and supported by its own testing and evaluation, DOE establishes a new product class for standard residential dishwashers with a ''Normal'' cycle of one hour or less for washing through drying. DOE has determined that a cycle duration of this length provides for additional consumer choice in the dishwasher market. Specifically, in this final rule, DOE concludes that a product class of standard residential dishwasher with a ''Normal'' cycle of one hour or less would allow manufacturers to provide consumers with the option to purchase a dishwasher that maximizes the consumer utility of a short cycle time to wash and dry dishes. While the

[1] A notation in this form provides a reference for information that is in the docket of this rulemaking (Docket No. EERE–2015–BT–STD–0005). *https://www.regulations.gov/docket?D=EERE-2018-BT-STD-0005.* This notation indicates that the statement preceding the reference is included in document number 6 in the docket at page 1.

short cycle product class will enable the development of products that can provide consumers with dishwashers that offer a shorter ''Normal'' cycle, creation of this product class will in no way limit or prevent consumers that prioritize energy efficiency from continuing to purchase dishwasher models that offer more energy efficient cycles that exceed the current standard or meet ENERGY STAR ratings. Introduction of this product class expands the options available to consumers, particularly those who prioritize cycle time for the ''Normal'' cycle, when considering the purchase of a new dishwasher.

B. DOE Testing and Analysis of Results

DOE testing and analysis included a review of normal and quick cycles available for a range of standard dishwashers currently available on the market. In conducting the testing, DOE analyzed the water and energy use, cycle duration, and cleaning performance of the ''Normal'' cycle and the shortest available cycle(s), as specified in the dishwasher's user manual.[2] The testing enabled DOE to determine whether it was feasible to manufacture a dishwasher with a cycle time of 60 minutes or less that could clean a full load of normally-soiled dishes, or whether a new product class for dishwashers with a ''Normal'' cycle of 60 minutes or less could be created to incentivize manufacturers to fill that gap in the market.

DOE tested 31 standard dishwasher models that encompassed various brands, features, and cycle options for different soil loads and durations. Test units were selected on the basis of different water and energy use, cycle durations, and features (*e.g.,* capacity, inlet water temperature requirement, soil sensors) with an emphasis on including a wide range of short-cycle options. The testing primarily examined short cycles with a duration of one hour or less. However, because many dishwasher units did not have cycles with such a short duration, cycles shorter in duration than the ''Normal'' cycle'' for the given test unit but longer than one hour were also considered.

Each unit was tested according to the DOE dishwasher test procedure at 10 CFR, part 430, subpart B, appendix C1 (appendix C1) for the ''Normal'' cycle, and then the appendix C1 methodology was repeated for the short cycle(s) to compare water and energy use among the cycles. The duration of each test cycle from washing through drying was also measured and recorded. Additionally, though DOE does not regulate cleaning performance under EPCA, for purposes of this analysis, DOE used the ENERGY STAR Test Method for Determining Residential Dishwasher Cleaning Performance (Cleaning Performance Test Method) to determine the cleaning scores, expressed in terms of a per-cycle Cleaning Index, of the tested units on each of the three soiled cycles (heavy, medium, and light soil loads) that are run for appendix C1 for soil-sensing dishwashers.[3]

The data summarizing the results of the testing, including 31 ''Normal'' cycles and 34 ''Quick'' cycles conducted on the 31 test units, may be reviewed in the docket for this rulemaking.[4] Parameters outlined include the per-cycle machine energy consumption, water consumption and associated water heating energy consumption, power dry energy consumption (if any), total energy consumption, duration, and Cleaning Index for each of the three soil load test cycles required under appendix C1. To determine the overall per-cycle values of energy and water consumption and cycle duration, for each ''Normal'' and ''Quick'' cycle, DOE applied the same weighting factors to the results from each soil load as specified in appendix C1. From these, along with the combined low-power mode energy consumption for each unit, an Estimated Annual Energy se (EAEU) for each ''Normal'' and ''Quick'' cycle was calculated, using the equations provided in 10 CFR 430.23(c)(2).

The results of DOE's analysis for ''Quick'' cycles are specified in Table II–1. While all of DOE's test results are included in the docket for this rulemaking, DOE presents the values for only the ''Quick'' cycle in Table II–1 because none of the ''Normal'' cycles on the units tested had a duration of less than 60 minutes.

TABLE II–1—MEAN AND MEDIAN VALUES OF WATER CONSUMPTION, EAEU, AND CYCLE TIME FOR THE TESTED ''QUICK'' CYCLES

	Mean	Median	Current DOE standard
Water (gal/cycle)	4.5	4.8	5.0
EAEU (kWh/year)	300	292	307

As shown in Table II–1, DOE calculated that the mean and median values of the EAEU for the tested ''Quick'' cycles are 292 and 300 kilowatt-hours per year (kWh/year), respectively, both of which are less than the current standard of 307 kWh/year. The corresponding mean and median values of the water consumption are 4.5 and 4.8 gallons/cycle, both of which are less than the current standard of 5.0 gallons per cycle (gal/cycle). *See* 10 CFR 430.32(f)(1)(i).

As noted previously, each unit was tested according to the DOE dishwasher test procedure at 10 CFR, part 430, subpart B, appendix C1 (appendix C1) for the ''Normal'' cycle, and then the appendix C1 methodology was repeated for the short cycle(s) to compare water and energy use among the cycles. The results of this testing demonstrated that ten of the units tested already complete a ''Quick'' cycle in 60 minutes or less. Of these ten ''Quick'' cycles tested with a time of less than one hour using the same soil loads specified by the DOE test procedure for testing the ''Normal'' cycle, 90% of those cycles would meet the DOE standard for energy consumption that is based on the normal cycle of a standard-size dishwasher, 90% would meet the DOE standard for water consumption that is based on the normal cycle of a standard-size dishwasher, and 80% would meet both. DOE notes, however, that while five of these units had a weighted-average cleaning score greater than or

[2] Short cycles that the manufacturer's instructions indicated were intended to only rinse the dishware or to wash only certain types of ware, such as plastics, were not considered.

[3] Although appendix C1 specifies a single cycle with a clean test load for non-soil-sensing dishwashers to minimize testing burden, for this purpose of this investigation, DOE conducted the three cycles with soiled test loads to obtain cleaning performance results for both soil-sensing and non-soil-sensing dishwashers.

[4] Dishwasher NODA Test Data (5–21–20), *https://www.regulations.gov/document?D=EERE-2018-BT-STD-0005-3213.*

equal to 70 [5], only one of these units had a cleaning score of greater than or equal to 70 for all three soil loads tested, and only one of the units is recommended by the manufacturer for a full load of normally soiled dishware—that single unit had a weighted-average cleaning score of only 63. Based on these results, DOE finds that a dishwasher with a ''Normal'' cycle time of 60 minutes or less is achievable and that establishing a product class where the ''Normal'' cycle is 60 minutes or less could spur manufacturer innovation to generate additional product offerings to fill the market gap that exists for these products (*i.e.,* ability to clean a load of normally-soiled dishes in under 60 minutes). Building upon existing dishwasher capabilities and the results of this testing as a foundation for future development of dishwasher models, and recognizing the potential for innovation within the industry for this specific product, this final rule establishes a product class where a one hour or less cycle from washing through drying represents the ''Normal'' cycle.

III. Discussion

Based on the evaluation of the petition and careful consideration of comments submitted during both comment periods provided for this rulemaking action, the Department of Energy establishes a new dishwasher product class for standard residential dishwashers with a ''Normal'' wash cycle that would completely wash and dry a full load of normally soiled dishes in one hour (60 minutes) or less. DOE intends to conduct a separate rulemaking to determine the applicable test procedure and energy conservation standards [6] for the new product class that provide the maximum energy efficiency that is technologically feasible and economically justified, and will result in a significant conservation of energy, 42 U.S.C. 6295(o)(2)(A). 84 FR 33869, 33873 (July 16, 2019).

In evaluating CEI's petition and establishing a separate product class for dishwashers that wash and dry dishes in less than an hour during the ''Normal'' cycle, DOE has determined that under 42 U.S.C. 6295(q), dishwashers with a ''Normal'' cycle time of one hour or less have a performance-related feature that other dishwashers lack that justifies a separate product class subject to a higher or lower standard than the standards currently applicable to the existing product classes of dishwashers. Testing conducted by DOE demonstrates that because many dishwashers currently offer a 60 to 90 minute ''Quick'' cycle wash that, on average, could meet the current DOE energy and water conservation standards, and a number of the units tested completed a ''Quick'' cycle in less than 60 minutes, that the potential exists for industry to develop a dishwasher that can complete a ''Normal'' cycle within one hour or less. Based on the test results described in Section II.B. of this final rule, the development of such a product will require effort on the part of industry product designers, and DOE establishes a product class to facilitate the development of a standard dishwasher where such values represent the ''Normal'' cycle through finalizing this rule.

A. Establishment of a Short-Cycle Product Class for Standard Residential Dishwashers, 42 U.S.C. 6295(q)

CEI petitioned DOE to establish a separate product class for dishwashers that have a cycle time of less than one hour from washing through drying. (CEI Petition, No. 0006 at p. 1) Under the current test procedure and energy conservation standards, dishwashers are tested and evaluated for compliance when operated on the ''normal cycle.'' Appendix C1, sections 2.6.1, 2.6.2, 2.6.3. ''Normal cycle'' is the cycle, including washing and drying temperature options, recommended in the manufacturer's instructions for daily, regular, or typical use to completely wash a full load of normally soiled dishes, including the power-dry setting. Appendix C1, section 1.12. Manufacturers may add additional cycles to dishwashers, but those additional cycles are not tested nor considered the ''Normal cycle''. Although CEI's initial petition did not specify the cycle that would be limited to one hour under the separate product class, CEI provided information supplemental to its petition clarifying the request for a new product class for dishwashers for which the normal cycle is less than one hour.[7] In this final rule, based on evaluation of comments and the test data and analysis described in section II.B. DOE establishes a separate product class for dishwashers that have a normal cycle time of one hour or less from washing through drying.

EPCA directs that when prescribing an energy conservation standard for a type (or class) of a covered product DOE must 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 DOE determines that covered products within such a group:

- Consume a different kind of energy from that consumed by other covered products within such type (or class); or
- have a capacity or other such 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.

In making a determination concerning whether a performance-related feature justifies the establishment of a higher or lower standard, DOE must consider such factors as the utility to the consumer of such a feature, and such other factors as DOE deems appropriate. (42 U.S.C. 6295(q)(1))

DOE has concluded that it has the legal authority to establish a separate short cycle product class for standard residential dishwashers with the manufacturer recommended ''Normal'' cycle of one hour or less, pursuant to the Department's authority under 42 U.S.C. 6295(q). Dishwashers with a short ''Normal'' cycle have a performance-related feature that other dishwashers currently on the market lack, which justifies the establishment of a separate product class subject to a higher or lower standard than that currently applicable to dishwashers. 84 FR 33869, 33871 (July 16, 2019). Consumers that prioritize energy efficiency will still be able to purchase models characterized by a longer ''Normal Cycle'' while consumers who place a greater value on cycle time will now have the opportunity to select a model with a shorter ''Normal cycle''. Creation of a new product class will allow the development of new offerings that will expand the market for standard residential dishwashers and provide consumers additional options when selecting the product that best meets their needs and differing preferences. As described in Section II.B., while many dishwashers on the market currently offer a ''Quick cycle'' option, these cycles are often not intended for normal loads, and the creation of a new product class will enable manufacturers to optimize their offerings to meet demand for short cycle products intended to

[5] Although DOE does not have information relating weighted-average cleaning scores to minimum consumer acceptance of cleaning performance, the ENERGY STAR program has established criteria for its 2020 ENERGY STAR Most Efficient dishwasher program of a minimum per-cycle Cleaning Index of 70 for each soil load.

[6] DOE will determine whether any updates to the test procedure are necessary prior to publication of any proposed energy conservation standard for the new product class. 10 CFR part 430, subpart C, appendix A, sec. 5(c).

[7] *See* document ID EERE–2018–BT–STD–0005–0007 available on *http://www.regulations.gov.*

clean a full load of normally soiled dishes.

DOE received comments from the Attorneys General of California, Connecticut, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, Oregon, Vermont, Washington, the District of Columbia, and the City of New York (State AGs and NYC); Sierra Club, Natural Resources Defense Council, and Earthjustice (the Joint Commenters); the Association of Home Appliance Manufacturers (AHAM); Appliance Standards Awareness Project (ASAP), along with the Consumer Federation of America (CFA), National Consumer Law Center on (NCLC), and Natural Resources Defense Council (collectively referred to as ASAP); and others challenging the Department's proposal that a one hour or less normal cycle was a performance-related feature that justifies the establishment of a new product class for standard residential dishwashers.

Comments submitted by the State AGs and NYC argued that the proposal does not qualify as ''a performance-related feature'' under 42 U.S.C. 6295(q) and that the consumer utility of a dishwasher is to clean dishes and other cookware. According to the commenters, while shorter cycles may provide clean dishes in less time, they do not provide an additional distinct dishwasher utility beyond the purpose of washing and drying dishes. The fundamental utility of a dishwasher, regardless of cycle length, is to clean dishes. A reduced cycle time is not a ''performance-related feature'' that would justify the creation of its own separate product class. (State AGs and NYC, No. 3136, pp. 5–8) Commenters cite DOE's prior rulemakings to conclude that the Department was acting inconsistently in proposing to establish a new product class for short cycle dishwashers under 42 U.S.C. 6295(q)(1). These commenters relied on the Department's cooking products rulemaking, where DOE determined that self-cleaning ovens justified a separate product class because the self-cleaning function was a distinct feature that standard ovens did not provide, as an example for when a separate product class was justified based on the existence of a performance-related feature. (*Id.,* pp. 7–8; 73 FR 62034, 62047 (Oct. 17, 2008)) Commenters distinguished self-cleaning ovens from DOE's water heaters rulemaking, where DOE determined water heaters that utilized heat pumps or electric resistance technology were still of the same utility (*i.e.,* providing hot water), and did not justify the creation of a new product class. Commenters argued that this dishwasher rulemaking was similar to the Department's water heaters rulemaking because dishwashers with a normal cycle exceeding one hour provided the same utility as a dishwasher with a normal cycle of one hour or less—both cycles provide clean dishes. Commenters' claim DOE provided insufficient justification as to why shorter cycle time deserves its own product class while a wide variety of other consumer options from speed to efficiency remain consumer preferences. (California Investor Owned Utilities (CA IOUs), No. 3142, p. 3)

Related comments also argued that if DOE were to establish ''a separate standard for every appliance having a detectable difference in feature, no matter how slight . . . then hundreds of standards might result,'' and that such actions would be contrary to the intent of Congress. (State AGs and NYC, No. 3136, p. 6 referencing H. Conf. Rep. No. 95–1751, at 115 (1978); Joint Commenters, No. 3145, p. 4 referencing H. Conf. Rep. No. 95–1751, at 115–116 (1978))

In response, DOE disagrees with the assertion that it is acting inconsistently with prior rulemakings by establishing a product class for dishwashers with a ''Normal'' cycle of one hour or less. DOE has previously determined that refrigerator-freezer configurations, oven door windows, and top loading clothes washer configurations all offer performance-related features that justified the creation of new product classes, including relying on cycle time as a feature with respect to commercial clothes washers. 84 FR 33869, 33872 (July 16, 2019). DOE maintains that a short cycle product class, the feature at issue in this rulemaking, is no different. In these prior rulemakings DOE recognized that the value consumers received from the feature, *i.e.,* refrigerator-freezer configurations, oven door window and time, justified the establishment of the product class under 42 U.S.C. 6295(q)(1).

DOE has taken the view that utility is an aspect of the product that is accessible to the layperson and based on user operation, rather than performing a theoretical function. DOE's discussion of its prior rulemakings and what it has determined is a ''utility'' pursuant to this principle is described at length in the July 2019 NOPR. 84 FR 33869, 33872 (July 16, 2019). These commenters appear to be suggesting a very different principle—that DOE can determine that a product attribute is a feature only if it adds a performance characteristic or utility beyond the primary purpose of the product (here a performance characteristic or utility beyond a dishwasher's primary purpose of cleaning dishes). Following the logic of this comment would mean a refrigerator-freezer's primary utility is to store and preserve fresh food, and that the configuration of the refrigerator-freezer does not provide a consumer with the utility of different ways to access its contents. The principle described in the comment would also mean that an oven's primary utility is to cook food, which would not allow for DOE to accommodate the utility provided by the ability to see the food cooking through a window. An oven door with a window uses more energy than an oven door without a window, but it allows the user to see the oven's contents without opening the oven door. DOE recognized that the oven door window offered a distinct consumer utility even though an oven door window did not go beyond the oven's primary function of cooking food. The commenter's argument does not explain why an oven door window justifies a product class when it does not add to the oven's primary purpose of cooking food. The food would come out cooked from an oven without a door window just as the dishes would come out clean from a dishwasher without a shorter ''Normal'' cycle. DOE has determined that in both cases, however, the oven door window and a shorter ''Normal'' cycle on a dishwasher are ''features'' that provide consumer utility and justify a separate product class.

The approach commenters suggest is contrary to the approach that DOE has taken in prior rulemakings, in which DOE recognized that the features for which consumers express a preference indicate that the feature provides some utility to the consumer, even if it is not the primary purpose of the product. For example, in a rulemaking to amend standards applicable to commercial clothes washers, DOE determined that the ''axis of loading'' constituted a feature that justified separate product classes for top-loading and front-loading clothes washers. DOE also determined that ''the longer average cycle time of front-loading machines warrants consideration of separate [product] classes.'' 79 FR 74492, 74498 (Sept. 15, 2014). DOE stated that a split in preference between top-loaders and front-loaders would not indicate consumer indifference to the axis of loading, but rather that a certain percentage of the market expresses a preference for (*i.e.,* derives utility from) the top-loading configuration. Similarly, the location of the freezer compartment for residential refrigerator-freezers (*e.g.,*

top mounted, side-mounted, and bottom-mounted) on these products provides no additional performance-related utility other than consumer preference. In other words, the location of access itself provides distinct consumer utility that does not add to the food storage purpose of the refrigerator-freezer. *Id.,* at 79 FR 74499.

Additionally, DOE maintains that the approach taken in this final rule and prior rulemakings is consistent with the rulemaking history that the commenters reference. In DOE's view, establishing a product class based on a top mounted freezer and bottom mounted freezer, for example, is no different than identifying a one hour or less ''Normal'' cycle for dishwashers as a performance-related feature that justifies a separate product class. In both cases, DOE has identified a feature that provides utility to the consumer and established a product class on the basis of that utility. It would be unreasonable to adopt the position these commenters assert, that features offering a distinct utility to consumers would not merit a separate product class, because they are a preference that is unrelated to the primary purpose of the product.

DOE's prior rulemakings also illustrate the value DOE has recognized in evaluating consumer preferences. As noted above, DOE determined the consumer value in seeing inside the oven, as opposed to opening the door and releasing the heat, was a feature that justified a separate product class. 63 FR 48038, 48041 (Sept. 8, 1998). Applying the same logic, DOE determined that the configuration of a refrigerator-freezer, which provided consumers with a value based on access to the bottom-mounted freezer compartment, was also a feature. 75 FR 59469, 59488 (Sept. 27, 2010). Under the commenters' proposed approach, neither feature would have justified the creation of a separate product class. DOE remains committed to recognizing the features that provide a utility for which consumers express a preference and that expand consumer choice.

Similarly, in the 2012 clothes washers' rulemaking, the Department received comments stating that consumer preference supported maintaining clothes washer product class distinction by method of access. 77 FR 32307, 32318 (May 31, 2012). In addition to noting that consumers preferred not to stoop or bend while loading clothes (something not required for top-loading washers), one manufacture estimated that top loading washers accounted for about 65 percent of the market. Consumer preference noticeably impacted the market and established the method of loading as a utility that ultimately supported the retention of the top-loader product class. DOE also specifically recognized cycle time as a feature pursuant to 42 U.S.C. 6295(q). *Id.,* at 77 FR 32319. In this final rule, DOE concludes that EPCA authorizes the Department to establish a product class for dishwashers with a ''Normal'' cycle of one hour or less. *See* 42 U.S.C. 6295(q).

If DOE were to follow these contrary comments to their logical conclusion, DOE would then lack the ability to establish product classes for features that, in the commenters' view, do not add to or go beyond the primary purpose of a product even if consumers received a recognized utility from those features as specified in 42 U.S.C. 6295(q). The Department's authority to establish product classes based on capacity and fuel type cast doubt on the appropriateness of the commenters' suggested guiding principle. Congress included other criteria in EPCA for DOE to consider when using its discretion to identify the utility of a feature that justified the creation of a new product class—criteria that do not ''add to'' the primary purpose of the product—specifically, capacity and fuel use. Protecting consumer utility, at the cost of potential increased energy use, clearly has a role to play while supporting consumer choice. Therefore, DOE has determined that it would be unreasonable to limit the authority granted in EPCA in 42 U.S.C. 6295(q) to prohibit the creation of product classes if the ''feature'' at issue does not somehow go beyond the primary purpose of a product. Like its prior rulemakings, DOE also finds here that consumers would receive a utility from a dishwasher cycle that can completely wash and dry normally soiled dishes in one hour or less, which justifies the creation of a product class on that basis.

Additionally, 42 U.S.C. 6295(q) cannot be read to prevent DOE from recognizing features that provide energy savings or other technological innovations that could yield consumer utility. When DOE determined that the window in an oven door was a ''feature'' justifying a different standard, DOE recognized that if the window were removed from the oven door that it may cause users to open the door more frequently. Such activity has the potential to result in an increase in energy usage even though some heat escapes through the window itself. While retaining the oven door window caused some loss of heat and therefore energy efficiency, DOE determined that the elimination of the oven door window would reduce the utility consumers received from being able to see inside and cause a greater increase of energy use. 63 FR 48038, 48041 (Sept. 8, 1998).

Also, as mentioned in the July 2019 NOPR, DOE is exploring the energy use of network connectivity for covered products, a relatively new technology that is becoming a feature offered in updated models of covered products and is already considered a utility to consumers. 84 FR 33869, 33873 (July 16, 2019). While this feature requires some attendant energy use, consumers are interested in the benefits provided through the connectivity of appliances that allow for remote control access, automatic supply replenishment, and intelligent energy consumption. 83 FR 46886, 46887 (Sept. 17, 2018). The innovation that network connectivity provides is certainly a feature of increasingly great utility that many consumers may come to prefer.

The Joint Commenters also argued that DOE cannot justify this final rule by referencing the history of dishwasher standards. First, Joint Commenters stated that because Congress established tighter dishwasher standards in 2007 in the Energy Independence and Security Act (EISA), section 311(a)(2), DOE cannot now establish this product class because the Congress amended the statute to further increase the standards after most of the alleged increases in cycle length occurred. Joint Commenters contended that because Congress chose not to relax dishwasher standards then, DOE cannot use the product class provision to establish a feature that would lessen standards now. In response, DOE notes that this rulemaking does not alter any existing energy or water conservation standards for dishwashers; rather, this final rule creates a new product class for dishwashers with a short ''Normal'' cycle time of one hour or less. In addition, DOE emphasizes that Congressional action to establish new standards for dishwashers does not negate the authority Congress granted to DOE in 42 U.S.C. 6295(q) to establish product classes based on size, capacity, fuel use or other features after considering the utility of the feature to the consumer. The Joint Commenters also stated that DOE found that if it adopted stronger standards it would have required substantially longer cycle times to maintain cleaning performance and relied on this determination as a factor when rejecting stronger standards in 2012. (Joint Commenters, No. 3145, p. 5 referencing 77 FR 31918, 31956–31957 (May 30, 2012)) DOE notes that in issuing its ''no new standard'' determination for dishwashers in 2016

(81 FR 90072 (Dec. 13, 2016)), DOE determined that a substantially longer cycle time would be needed to maintain the cleaning performance of standards more stringent than those in place. 81 FR 90072, 90073 and 90116 (Dec. 13, 2016). There, DOE determined the existing standards were sufficient and rejected more stringent requirements that would have required longer cycle times. In addition, DOE clarifies that this final rule addresses an issue not addressed in that rulemaking, *i.e.,* whether a one hour or less ''Normal'' cycle provides a consumer performance-related feature or utility.

The Joint Commenters also sought support for their position by arguing that when DOE surveyed the utility or performance-related features of dishwashers in 1991 that affect energy efficiency and determined that establishing capacity-based product classes was the only action needed to minimize the impact on consumer utility. (No. 3145 at p. 5 referencing 56 FR 22250, 22254, 22275 (May 14, 1991)). Their reliance on this rulemaking is misplaced. The standards and product offerings today are significantly different from what was considered available and offered nearly three decades ago in 1991, and such comparison of performance related features is not relevant for this final rule.

Some commenters expressed a concern that if DOE relies only on consumer preference there would be a plethora of product classes created. (*Id.,* at p. 4) However, in the product types DOE describes herein (*e.g.,* ovens, refrigerator-freezers, clothes washers, etc.), in which the Department developed a product class based on consumer preference, DOE has not seen the concern manifested. CEI's petition and the comments DOE received in response to the petition and its July 2019 proposed rule indicate that a significant number of consumers expressed various levels of dissatisfaction with the amount of time and energy necessary to run their dishwasher to clean a load of normally soiled dishes. The Committee for a Constructive Tomorrow (CFACT) cited a General Electric Appliances (GEA) survey of roughly 11,000 dishwasher owners that reported the long wait times for clean dishes as a major consumer annoyance. (CFACT, No. 2941 at p. 1) These comments express the utility consumers would receive from owning a dishwasher that could clean normally soiled dishes using a ''short-cycle'' dishwasher. (Attorneys General of Arizona, Indiana, Louisiana, Oklahoma, and South Carolina, and the then-Governor of Mississippi, Phil Bryant (Attorneys General and Governor Bryant), No. 3131, pp. 1–2) CEI's 2019 survey determined a majority of surveyed consumers would choose to own a faster dishwasher even if it cost more to operate. (No. 3137, p. 4)

Relying on their 2019 survey, CEI also considered the utility customers would receive from shorter cycle durations and faster dishwashers. (*Id.,* at pp. 2–3) The survey determined that 81% of participants believed a dishwasher that could clean and dry dishes in an hour or less would be useful and 92% of participants favored cycles with a duration of one hour or less. The survey polled consumers' thoughts regarding washing dishes by hand and nearly half of those surveyed considered washing their dishes by hand because the cycle was too long with about 50% stating that they often or always wash dishes by hand due to the long cycle time. (*Id.,* at pp. 3–4) Because handwashing is often times more water intensive than using the dishwasher, the survey results indicated that faster cycles could substantially reduce energy and water consumption by reducing the amount of handwashing. (*Id.*) Targeting respondents who mostly run their dishwashers when they go to bed, CEI's survey also asked respondents if they would run their dishwasher at some other time if the dishwasher was faster. The survey showed 77.7% of respondents said yes, indicating that even if all dishwashing was conducted overnight, there is evidence that households may do so as a result of long cycle times. (*Id.,* at 4)

The Joint Commenters remarked that if there are no dishwashers currently capable of meeting the proposal's cycle duration limit and cleaning performance goals while operating in the normal cycle, EPCA's product class provision does not provide DOE the authority to facilitate that capability. The Joint Commenters challenged DOE's interpretation of the product class provision as providing the Department the discretion to determine that some covered products should have a capacity or other performance-related feature they presently do not have. (No. 3145, p. 4; 84 FR 33869, 33872–33873 (July 16, 2019)) The Joint Commenters contend that the provision was written in the present tense, meaning that a performance-related feature may trigger an action only when there are covered products with that feature already part of an existing product class. Joint Commenters referenced certain provisions in EPCA (*e.g.,* 42 U.S.C. 6295(bb) (establishing performance specifications for compact fluorescent lamps and authorizing DOE updates), 42 U.S.C. 6295(i)(1), (3)–(5) (prescribing minimum color rendering index values for general service fluorescent lamps and authorizing DOE updates) to support their position. They argue that if there is no dishwasher currently capable of operating in the normal cycle in one hour or less, then the product class provision does not provide DOE the authority to make such a product available. Only in situations where the feature is already available does the product class provision provide DOE the authority to act. (Joint Commenters, pp. 4–5)

The Joint Commenters misunderstand the effect of DOE's product class rule. DOE is not requiring manufacturers to make dishwashers with a normal cycle one hour or less; rather, this rule is establishing a product class based on that criterion. Manufacturers can choose to develop such products if they want to do so, but they are not forced to take such action. As a result, the provisions cited in EPCA that establish performance specifications for fluorescent lamps and color rendering index values and authorize DOE to update those requirements cited by the commenter are inapplicable to this final rule establishing a new product class for dishwashers.

Additionally, while the commenter is correct that DOE does not regulate in a vacuum, the testing described by DOE in section II.B. of this final rule indicates that dishwashers already exist on the market that can wash dishes in a designated ''Quick'' cycle in 60 to 90 minute time periods. In this final rule, DOE is establishing a product class for dishwashers where the one hour or less time period denotes the ''Normal'' cycle. EPCA does not specify how prevalent a specific feature must be on the market (*i.e.,* the commenter specifies that DOE can act only when there are covered products with that feature already part of an existing product class). For example, as noted in the July 2019 NOPR and DOE's 2018 RFI on ''smart products'' (83 FR 46886 (Sept. 18, 2018)), DOE is just beginning to explore the energy use of the network connectivity of covered products. Network connectivity is a technology that has only recently begun to appear on the market. Moreover, it clearly has a desirable consumer utility and is a fast growing feature of new models of covered products. Network connectivity, however, comes with attendant energy use. EPCA's product class provision cannot be read to prohibit DOE from establishing product classes for products that have network mode connectivity simply because that

feature is not currently common on the market.[8] Similarly, for dishwashers, 42 U.S.C. 6295(q) authorizes DOE to establish standards for product features that provide consumer utility, such as shorter cycle times.

DOE acknowledges that it has previously established product classes based on features that have been in the market for a significant period of time. For example, ventless clothes dryers had been on the market for at least 25 years when the Department established separate energy conservation standards for ventless clothes dryers.[9] In that rulemaking, DOE reasoned that ventless clothes dryers provided a unique utility to consumers because these products could be installed in areas where vents were otherwise impossible to install. 76 FR 22454, 22485 (Apr. 21, 2011). In that situation, however, manufacturers of those products had been operating for many years under a waiver from DOE's test procedure. It is important to note that a test procedure waiver is not a waiver from the standard. Those manufacturers were potentially at risk because their product met the definition of a clothes dryer but could not meet the standards applicable to clothes dryers even when using a modified test procedure. DOE established a test procedure and standards for ventless clothes dryers—standards that were lower than the standards currently applicable to other clothes dryers on the market—in 2011 (76 FR 22454, 22469–22471 (Apr. 21, 2011)), but early DOE action would provide manufacturers with certainty earlier in the process of product development as to the test procedure and standards applicable to their products. As noted in the previous paragraph, DOE is applying this reasoning to new technology and is exploring the energy use of network connectivity of covered products as the technology becomes more available. Similarly, the development of a new product class for dishwashers with a ''Normal'' cycle of one hour or less would initiate the development of innovative technologies that could achieve normal wash performance within a shorter cycle time.

DOE also received comments asserting that the proposal was unnecessary given that dishwashers on the market already offered a quick cycle and that there was no consumer utility to a short cycle to justify a new product class. ASAP and other commenters argued that because such quick cycles were already widely available, the utility of a short cycle already existed, making the creation of a separate product class unwarranted. (No. 3139. p. 2; Alliance to Save Energy (ASE), No. 3185, p. 2) Similarly, the Joint Commenters stated that because there are products currently capable of a quick wash, EPCA does not provide DOE the authority to mandate that the normal cycle should be one hour or less. (No. 3145, p. 4) The California Energy Commission (CEC) explained that EPCA's product class provision requires DOE to show that the new product class has a feature that other products in the class lack, not that the feature exists but is not offered as the normal cycle. CEC continued that with such quick cycle dishwashers already on the market, this situation fails to justify creating a new product category that would operate with a higher or lower standard under 42 U.S.C. 6295(q)(1)(B). (CEC, No. 3132, p. 6) Similarly, ASE commented that a new product class is not necessary, as demonstrated by AHAM's data, because dishwashers with cycle durations of about an hour are available. (No. 3185, p. 2) Arguing further that the proposal was unnecessary, the State AGs and NYC contended that cycle times have limited importance to consumers and that DOE's position does not meet the burden for explanation for the new product class. (No. 3136, p. 11) Electrolux Home Products (EHP) also noted that a specific short cycle dishwasher product was not a high priority for consumers and that short cycles consistently ranked low as the feature most wanted by consumers. (No. 3134, p. 1) Relying on the data provided from its members surveyed, AHAM similarly noted that, when selecting a dishwasher, cycle time was ranked lowest in importance among the features available to consumers whereas cleaning performance, loading, and dish rack features were considered much more important to consumers. AHAM indicated that this meant there was limited demand for such products. (No. 3188, pp. 4–5)

In contrast, other commenters noted in support of DOE's rule that the public will ultimately receive a significant benefit from the creation of such products. The Attorneys General and Governor Bryant commented that the new product class would provide a product that will clean and dry dishes within the hour that meet consumers' needs while reducing the total energy used and saving money as consumers will no longer need to run their dishwashers multiple times. (No. 3131, p. 3) Further, a new product class would increase the number of available dishwashers on the market and provide consumers with more freedom to select a product that best meets their needs. (*Id.,* pp. 4–5)

DOE maintains that while there may be dishwashers that offer a ''Quick'' wash cycle in 60 to 90 minute intervals, these cycles are not tested nor considered the ''Normal'' wash cycle for purposes of demonstrating compliance with existing energy and water conservation standards. The existence of these products in the market does not prevent the establishment of the product class DOE is creating with this rulemaking. Manufacturers' compliance with existing dishwasher standards requires testing be conducted on the ''Normal cycle'', which is defined as the ''the cycle type recommended by the manufacturer for completely washing a full load of normally soiled dishes including the power dry feature.'' *See* 10 CFR part 430, subpart B, appendix C1. Commenters note that current dishwasher models offer a variety of cycle options or settings such as normal, heavy, light, eco, quick, pots, and pans, china, and so on that include a quick wash cycle. These cycles do not meet DOE's regulatory definition of the ''Normal cycle'' and are not subject to the Department's established dishwasher test procedure that is used when determining compliance with energy conservation standards. DOE intends to conduct a rulemaking to establish standards for the new product class for standard residential dishwashers based on the one hour or less ''Normal'' cycle. This would provide consumers with a means to compare products across the product class and make an informed decision when deciding to purchase a product that emphasizes cycle time or a different product attribute subject to the applicable minimum standards. Contrary to the commenters' assertions, a new product class does not inevitably mean a loss of existing energy savings. DOE will consider the appropriate standards for the new product class in a separate rulemaking, where it will complete its rulemaking analysis pursuant to the seven factors specified in 42 U.S.C. 6295(o) for the establishment of standards.

[8] As discussed in section III. B, EPCA's anti-backsliding provision also cannot be used to prohibit the development of product classes that allow for covered products to be connected to a network simply because standards for those products were established prior to the time that network connectivity was even contemplated, and thereby eliminating the ability to implement this consumer desired option.

[9] On February 17, 1995, DOE issued a decision and order granting a waiver from the clothes dryer test procedures to Miele Appliances Inc., (60 FR 9330), DOE later granted similar waivers to LG Electronics, (73 FR 6641, Nov. 10, 2008) and BSH Home Appliances Corporation, (78 FR 53448, Aug. 28, 2013).

AHAM and others commenters argued that most dishwashers available today already offer consumers cycle options that clean dishes in less time than the normal cycle, *i.e.,* quick cycle. AHAM based this statement on a recent survey that claimed 86.7% of reported 2017 dishwasher shipments provided consumers a cycle option that could wash and dry a load in just over an hour. (AHAM, No. 3188, p. 2; ASE, No. 3185, pp. 2–3; and ASAP, No. 3139, p. 1) Ceres BICEP, relying on Consumer Reports' 2017 Spring Dishwashers Survey, also remarked that nearly every dishwasher today offers a quick cycle mode and that the majority of consumers surveyed either did not view the cycle length as an issue, or used a quick cycle to address concerns about cycle length. (No. 2746, pp. 2–3)

In response to these comments, DOE acknowledges that quick or fast cycles are available. CEI provided evidence that these quick cycles do not satisfy consumers' needs as these cycles are not designed and intended for normal use. (No. 3137, pp. 4–5) CEI identified various models that offered a quick wash cycle for lightly soiled recently used dishes or lightly soiled dishes with no dried-on food.[10] These cycles are not considered for testing purposes to determine compliance with DOE's energy conservation standards. DOE recognizes ASE's comment that, for a substantial percentage (just under half) of dishwashers with short cycles, manufacturers do not discourage consumers from using these cycles to wash normally soiled loads. Some even recommend using short cycles for normally soiled dishes. (No. 3185, p. 3) The fact that dishwashers have separate ''Normal'' and ''Quick'' cycles, however, indicates that these cycles provide a separate utility and that the consumer recognize that there is a difference between using the ''Normal'' versus the ''Quick'' cycle. The fact that manufacturers ''do not discourage'' use of the ''Quick'' cycle for a full load of normally soiled dishes also does not equate to the manufacturer-recommended cycle for doing so.

Based on the manufacturer descriptions of the intended use of these quick cycles, DOE reiterates that the ''Quick'' cycles available on current dishwasher models do not provide the same utility as the Department's new one hour or less short cycle product class. The new product class would be suited for cleaning normally soiled dishes and be subject to applicable energy and water conservation standards and testing like product classes for all covered products, pursuant to the outcome of separate rulemaking(s) to address these requirements.

Furthermore, while AHAM argued that existing quick wash cycles satisfy consumer needs, CEI's 2019 survey provided different consumer feedback. Consumer responses determined that 46.1% of consumers did not have a quick or express cycle available and only 13.5% of those surveyed said they used such a cycle more often than the manufacturer recommended normal cycle. Additionally, 84.6% of those consumers with a quick or express cycle stated that they would find a one-hour normal cycle useful. Of those consumers with a quick or express cycle, 87.6% said they would use such a cycle more if it cleaned their dishes better. (CEI, No. 3137, p. 5) Additionally, commenters supporting the new product class explained that the quick cycles identified by AHAM tend to include disclaimers with time additions that ultimately result in cycle durations that are comparable to the normal wash cycle. There is clearly a demand for such a product based on these results and the comments DOE received in response to its publication of the petition and the July 2019 NOPR. DOE reiterates that consumers, by expressing a preference, have identified a consumer utility that provides the basis for creating a product class based on cycle duration.

The CA IOUs commented that while manufactures do not always recommend quick cycles for daily use, DOE offered no evidence demonstrating that these cycles were less effective at cleaning. The CA IOUs called for DOE to conduct its own analysis regarding the cleaning adequacy for these quick cycles. (No. 3142 p. 2) The CEC called the proposed one hour cycle time arbitrary based on the fact that the cycle proposed is less time than current normal cycles. CEC argued that the rule relied on limited data that did not reach the conclusion that there is a consumer preference for this short cycle duration or that the cycle time would result in cleaner dishes. CEC concluded that DOE and CEI failed to demonstrate that a one-hour cycle time could not meet the existing standard, and that DOE made this presumption with no evidence provided as needed to justify the creation of a new product class. (No. 3132 p. 4)

In response, DOE emphasizes that EPCA does not authorize DOE to establish test procedures and standards that require manufacturers to evaluate or meet a certain level of cleaning performance. DOE test methods and standards pertain to the measurement of and establishment of minimum levels of energy use (and, for some products, water use) or maximum levels of energy efficiency. *See* 42 U.S.C. 6293 and 42 U.S.C. 6295. DOE has also previously addressed the argument concerning the consumer utility provided by a dishwasher with a faster manufacturer identified normal cycle in the preceding paragraphs of this section.

In establishing this product class, the Department conducted a comprehensive review assessing a range of dishwashers with additional cycles shorter than the manufacturers' recommended normal cycle, *i.e.,* the cycle subject to DOE testing and compliance with efficiency standards. Based on this review, DOE determined that it was feasible to manufacture a dishwasher with a ''Normal'' cycle time of 60 minutes or less and that establishing a product class where the ''Normal'' cycle is 60 minutes or less could spur manufacturer innovation to generate additional product offerings to fill the market gap that exists for these products (*i.e.,* ability to clean a load of normally-soiled dishes in under 60 minutes).

DOE determined that ten of the 34 cycles tested offered a ''Quick'' cycle of less than one hour. Of those models with a ''Quick'' cycle of less than one hour using the same soil loads specified by the DOE test procedure for testing the ''Normal'' cycle, 90% could meet the current DOE energy consumption standard that is based on the normal cycle of a standard-size dishwasher, 90% would meet the water consumption standard that is based on the ''Normal'' cycle of a standard-size dishwasher, and 80% could meet both standards.[11] The ''Quick'' cycles of less than one hour were identified as offering lesser mean and median per-cycle cleaning indices (*i.e.,* the mean and median Cleaning Index for the heavy, medium, and light soil loads)

[10] CEI, p. 5 (LG, LD–12AS1/LD–12AW2, *https://www.lg.com/au/support/products/documents/LD-12AS1.pdf* (''This program is for that quick wash of lightly soiled recently used dishes and cutlery.''); Samsung, DW60J99X0 Series, *https://www.appliancesonline.com.au/public/manuals/Samsung-WaterWall-Dishwasher-DW60H9970US-User-Manual.pdf* (''Lightly soiled with very short cycle time.''); Whirlpool, ADP 502, *http://docs.whirlpool.eu/_doc/19513945500.pdf* (1 hour cycle, ''For lightly soiled loads that need a quick basic drying,'' quick cycle ''Fast cycle to be used for slightly dirty dishes, with no dried-on food.'')).

[11] While DOE does not have legal authority under EPCA to establish a test for cleaning performance or a standard that requires a certain level of cleaning performance, DOE does consider cleaning performance in screening available technologies to ensure that the program does not consider as a dishwasher a device that cannot clean dishes.

than those for the ''Normal'' cycle and all ''Quick'' cycles including other slightly longer ''Quick'' cycles.

TABLE II–2—MEAN AND MEDIAN VALUES OF CLEANING INDEX FOR EACH SOIL LOAD OF THE TESTED ''NORMAL'' AND ''QUICK'' CYCLES

Per-cycle cleaning index	Normal cycle			All quick cycles			Quick cycle <1 hour		
	Heavy soil load	Medium soil load	Light soil load	Heavy soil load	Medium soil load	Light soil load	Heavy soil load	Medium soil load	Light soil load
Mean	63.1	67.9	78.0	68.2	73.4	82.1	49.5	57.9	75.9
Median	68.4	72.5	80.8	73.1	78.4	84.6	53.8	60.4	76.2

This indicates that the currently available 60 minute or less ''Quick'' cycles, on average, are less effective at cleaning dishes when compared to the ''Normal'' and other slightly longer ''Quick'' cycle options. As described in Section II.B., while DOE realizes that these ''Quick'' cycles are not necessarily intended to clean normally soiled dishes, at least some of these cycles appear to be capable of cleaning dishes at this soil level. DOE sees this as an opportunity for industry to develop a dishwasher that is characterized by a ''Normal'' cycle of one hour or less that manufacturers would recommend to clean normally soiled dishes. Based on this assessment and in consideration of comments received, DOE maintains the position taken in the July 2019 NOPR and characterizes the new short cycle product class for standard dishwashers on the one hour or less cycle for the manufacturer tested ''Normal'' wash.

Commenters also identified the prevalence of ENERGY STAR rated models, many offering ''Quick'' cycle models, as indicating that ''Quick'' cycles operate within in the existing standards. These commenters argued that a new class of dishwashers and accompanying different standards were not necessary to establish quicker cycles. This was because existing models already had the capability to provide ''Quick'' cycles while operating within the existing standard, therefore, the record failed to support the creation of a new product class. (State AGs and NYC, No. 3136, p. 10)

DOE cannot conclude that the existence of dishwashers with an ENERGY STAR rating that also offer ''Quick'' cycles is an indication that ''Quick'' cycles operate within the confines of current energy and water consumption standards. As stated previously, dishwasher energy and water efficiency is tested during the ''Normal'' wash cycle, not the ''Quick'' setting. The manufacturer's identified ''Normal'' wash is the cycle subject to energy and water consumption use testing and standards. While DOE test data indicated that the ten ''Quick'' cycles of less than 60 minutes duration met the current DOE standards, and five of the units had a weighted-average cleaning score of greater than 70, only one of these units had a cleaning score of greater than or equal to 70 for all three soil loads tested, and only one of the units is recommended by the manufacturer for a full load of normally soiled dishware—that single unit had a weighted-average cleaning score of only 63. This demonstrates that manufacturer innovation within the new product class could lead to dishwashers with a ''Normal'' cycle of 60 minutes or less and cleaning performance acceptable to consumers.

To excuse some dissatisfaction customers expressed with cycle time, AHAM noted many consumers were unaware that other options, such as a ''Quick'' cycle wash, were available on their dishwasher models. AHAM suggested such consumers should educate themselves about their dishwashers as opposed to having DOE issue new regulations. (AHAM, p. 5) DOE acknowledges AHAM's position that some consumers may not be aware of these cycle options, but DOE cannot rely on such a presumption in determining whether to establish the one hour or less ''Normal'' cycle product class in this final rule. This rulemaking is premised on consumers expressing their comments and views on cycle time and the appropriateness of a product class for ''Normal'' cycle dishwashers with a cycle time of one hour or less, rather than a discounting of consumer understanding of product user manuals.

Commenters supporting the new product class noted that the existing regulations were counterproductive to the goal of increasing energy efficiency of dishwashers as many consumers end up running their dishwasher multiple times to get dishes clean. (CEI, No. 3137, pp. 3–4; CFAST, No. 2941, p. 2) This was because the current standards do not take into account pre-washing or multiple wash cycles of the same load, which can increase the water and energy use associated with washing dishes. (Attorneys General and Governor Bryant, No. 3131, p. 3; CFACT, No. 2941, p. 1) These commenters acknowledged that DOE's rulemaking would remedy the problems of redundant or prewashing and the unaccounted energy and water use by establishing a new product class specifically for residential dishwashers that allow ''a 'normal' wash to accomplish'' the task of cleaning dishes in an amount of time that meets consumer needs. (Attorneys General and Governor Bryant, No. 3131, p. 3)

DOE reiterates that the creation of a new product class would provide a utility to consumers based on consumers expressing their interest in a shorter cycle duration for the ''Normal'' cycle. Similar to the product class for oven doors with windows, a product class for dishwashers with a shorter ''Normal'' cycle could save energy and water by preventing the handwashing of dishes or the running of a dishwasher multiple times for the same load. CEI also responded directly to commenters who argued that cycle length was unimportant because consumers mostly run their dishwashers at bedtime or at night. Relying on data collected during a 2019 survey, CEI determined that 50% of Americans do not run their dishwasher at night. And, when consumers were asked whether they would run their dishwasher at some other time if the dishwasher cycle was faster, 77.7% of respondents said they would. From this information, CEI determined that ''even if *all* dishwashing was done at bedtime, this would just be evidence that it is long dishwasher cycles that lead to much of the bedtime dishwasher use.'' (No. 3137, p. 4) DOE concludes that even if the majority of consumers ran their dishwasher at night, this still indicates that consumers consider cycle time important. 84 FR 33869, 33874 (July 16, 2019).

CEI also responded to AHAM's arguments that there was no demand for

a faster dishwasher, but that consumers were more interested in features such as quieter machines. (No. 3137, p. 4) CEI's survey asked consumers ''[i]f you could choose between today's dishwasher models, or a model that is faster but costs slightly more to run, which would you choose?'' The results found 59.4% would choose the faster model even if it cost slightly more to run. (CEI, p. 4) The survey provided evidence that consumer demand for faster dishwashers does exist even in light of increased expenses. DOE also notes that even if attributes such as noise level or detergent formulation lead to increases in cycle time, these factors do not undercut DOE's establishment of a shorter product class for the ''Normal'' cycle. Manufacturers can continue to determine desired trade-offs for cycle time, noise level, and other factors in developing their product offerings.

DOE received comments arguing that the Department's proposal violated EPCA's product class provision because the 2019 NOPR failed to include accompanying efficiency standards for the newly created product class for short cycle dishwashers. These commenters specified that when exercising its authority under 42 U.S.C. 6295(q), DOE is required to promulgate energy efficiency standards for any class created thereunder, in accordance with the other requirements of 42 U.S.C. 6295, including EPCA's anti-backsliding provision, and the economic justification and technological feasibility analyses. Commenters contend that DOE improperly bifurcated the product class rulemaking by separating the creation of the product class from the promulgation of applicable standards. (State AG and NYC, No. 3136, pp. 8–9; Joint Commenters, No. 3145, p. 7)

The Joint Commenters and ASAP continued to argue that DOE cannot avoid complying with an existing standard through the creation of a product class that lacks an accompanying standard. The establishment of a new product class is to accompany the establishment of a standard. DOE cannot delay evaluating whether a new standard would meet the anti-backsliding provision in a separate rulemaking because such actions must be considered together. (Joint Commenters, No. 3145 pp. 7–8; ASAP, No. 3139, p. 3)

DOE addresses commenters' concerns regarding anti-backsliding in section III.B. of this final rule. In response to the comments arguing a purported EPCA requirement to establish standards whenever a product class is established exists, DOE emphasizes that EPCA does not contain such requirement. Section 325(q) of EPCA states that, ''[a] rule prescribing an energy conservation standard for a type (or class) of covered products 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[.]'' This provision does not specify any requirements for the timing of product class designation in regards to a parallel establishment of a standard. The language of the statute accommodates pre-designation of a product class prior to the designation and establishment of applicable standards, as well as the simultaneous designation envisioned by commenters.

DOE's 2009 beverage vending machines (BVM) energy conservation standard rulemaking offers an example of a rulemaking where DOE designated a product class prior to the designation and establishment of an applicable standard for that product or equipment. When DOE initially considered energy conservation standards for BVMs, DOE did not consider combination vending machines as a separate equipment class, but considered that equipment with all other Class A and Class B BVMs. Based in part on the comments received concerning the proposed rule, DOE recognized that combination vending machines had a distinct utility, and concluded that combination vending machines were a class of BVMs. However, DOE was unable to determine whether energy conservation standards for combination vending machines were economically justified and would result in significant energy savings and subsequently decided to not set standards for the equipment class at that time. Instead, DOE reserved standards for combination vending machines and modified the definition of Class A and Class B BVMs to accommodate a definition for combination vending machines. 74 FR 44914, 44920 (Aug. 31, 2009). This action thereby reserved a place for the development of future standards for combination vending machines that DOE then established in 2016. 81 FR 1028, 1035 (Jan. 08, 2016).[12]

The energy conservation standards rulemaking for distribution transformers in 2007 offers another example of this type of activity by the Department. There, DOE clarified that although it believed that underground mining distribution transformers were within the scope of coverage, it recognized that mining transformers were subject to unique and extreme dimensional constraints that impacted their efficiency and performance capabilities and decided to not establish energy conservation standards for underground mining transformers. In the final rule DOE established a separate equipment class for mining transformers and reserved a section with the intent to develop the analysis needed to establish an appropriate energy conservation standard in the future. 72 FR 58190, 58197 (Oct. 12, 2007). DOE later reached a similar conclusion in 2013 when it decided to again not set standards for mining distribution transformers. 78 FR 23336, 23353 (Apr. 18, 2013).

Both of these examples highlight prior instances where the Department established a new product class without simultaneously ascribing an associated energy conservation standard. DOE is simply doing the same by finalizing this rulemaking for a new product class for dishwashers with a one hour or less normal cycle.

In the July 2019 NOPR, DOE granted CEI's petition for a new product class for standard residential dishwashers with a short ''Normal'' cycle of one hour or less and finalizes the creation of such a product class through this final rule. This rulemaking considers the parameters of the new class of dishwashers through the identification of a performance-related feature pursuant to EPCA, 42 U.S.C. 6295(q)(1)(B). EPCA does not require DOE to simultaneously establish energy conservation standards in the same rulemaking as the determination of a new product. In fact, this action is similar to situations where DOE has finalized a determination and a covered product exists without an applicable standard until the Department completes a test procedure rulemaking and a standards rulemaking for that product. *See* 42 U.S.C. 6292(b).

Following issuance of this final rule, DOE intends to conduct the necessary rulemaking to consider and evaluate the energy and water consumption limits for the new product class to determine the standards that provide the maximum energy efficiency that is technologically feasible and economically justified, and will result in a significant conservation of energy, 42 U.S.C. 6295(o)(2)(A). DOE will provide interested members of the public an opportunity to comment on any preliminary rulemaking documents and proposed energy conservation standards for this product class during that rulemaking proceeding. 84 FR 33869, 33874 (July 16, 2019).

[12] In 2016, DOE amended the definition of combination vending machine, created two classes of combination vending machine equipment, and promulgated standards for those classes. 81 FR 1028, 1036 (Jan. 08, 2016).

In response to CEI's claim that longer cycles are the product of Federal regulation, some commenters countered that longer cycles are actually a product of growing consumer preference for quieter dishwashers and mandated environmentally friendly detergents. (State AGs and NYC, No. 3136, p. 10; CA IOUs, No. 3142, p. 1; CEC, No. 3132, p. 4) ASE noted that changes in detergent over the past decade have lengthened dishwasher cycle times because of the change in using phosphates to enzyme-based detergents, which has also increased consumer interests in owning quieter dishwashers. This commenter argued that the creation of a new product class for dishwashers with a normal cycle time of less than one hour will not solve the residual problems of noise or associated heat damage—one or both of which will have to increase to insure adequate performance without phosphate detergents. (ASE, No. 3185, pp. 4–5)

DOE recognizes that consumers' interest in dishwasher attributes may extend beyond cycle duration. Consumers may be interested in environmentally friendly and energy efficient products, as well as products that produce less noise. DOE maintains that these interests are not mutually exclusive. The Department's creation of a new product class provides manufacturers the opportunity to invest in innovation to address the many aspects of product performance valued by consumers.

B. Anti-Backsliding Considerations, 42 U.S.C. 6295(o)

When establishing a new product class, DOE must consider EPCA's general prohibition against prescribing ''any amended standard which increases the maximum allowable energy use, or, in the case of showerheads, faucets, water closets, or urinals, water use, or decreases the minimum required energy efficiency, of a covered product'' in any rulemaking to establish standards for a separate product class. 42 U.S.C. 6295(o)(1). DOE recognizes that this provision must be read in conjunction with the authority provided to DOE in 42 U.S.C. 6295(q) to specify ''*a level of energy use or efficiency higher or lower than that which applies (or would apply) for such type or class . . .*'' if the Secretary determines that covered products within such group consume a different type of energy or have a capacity or other performance-related feature that 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) (emphasis added). Therefore, EPCA explicitly acknowledges that product features may arise that require the designation of a product class with a standard lower than that applicable to other product classes for that covered product. 84 FR 33869, 33872 (July 16, 2019).

Opponents of the new product class argued that the finalization of the class would result in a weakening of efficiency standards for residential dishwashers and challenged that DOE cannot use the establishment of performance-related feature as a workaround for complying with EPCA's anti-backsliding provision, 42 U.S.C. 6295(o)(1).

Specifically, the State AGs and NYC commented that the proposal aimed to add a third product class without an applicable efficiency standard, thereby establishing a dishwasher subclass that could consume unlimited amounts of energy and water, violating the anti-backsliding provision. (No. 3136, p. 3, referencing 84 FR 33869, 33873 and 33880 (July 16, 2019)) These commenters disagreed with DOE's argument in the 2019 NOPR that the anti-backsliding prohibition of 42 U.S.C. 6295(o)(1) was conditioned by 42 U.S.C. 6295(q) because the latter subsection uses the present and future tense: DOE ''shall specify a level of energy use or efficiency higher or lower than that *which applies (or will apply)* for such type (or class) for any group of covered products which have the same function or intended use.'' 42 U.S.C. 6295(q) (emphasis added); (State AGs and NYC, No. 3136, p. 4 referencing 84 FR 33869, 33872–73 (July 16, 2019)). Commenters continued that DOE misconstrued the meaning of section 6295(q)'s reference to a standard not yet applicable as intending to account for situations where a basic product class and standards have not been established or yet to go into effect. The Department's reading, the commenters conclude, effectively repeals the anti-backsliding provision in product class designations. These commenters argue that while 42 U.S.C. 6295(q) acknowledges that differences in energy consumption, capacity or other performance-related features among products within a product group may justify the application of different standards, the provision cannot be construed to allow DOE to prospectively establish product classes as a means of evading EPCA's prohibition against backsliding. (State AGs and NYC, No. 3136, p. 4)

DOE received similar comments arguing that even if it had the authority to create a new product class based on a shorter cycle time qualifying as a performance-related feature, the anti-backsliding provision prevents the standard that applies to that class from being less stringent than the current standard applicable to all dishwashers regardless of cycle duration. (Joint Commenters, No. 3145, p. 1–2; CEC, No. 3132, pp. 6–7)) EPCA's anti-backsliding provision prohibits DOE from prescribing ''any amended standard which increases the maximum allowable energy use, or, in the case of showerheads, faucets, water closets, or urinals, water use, or decreases the minimum required energy efficiency, of a covered product.'' Therefore, even if DOE could lawfully create a new product class for dishwashers based on cycle duration, these commenters assert that any new standard established cannot ''decrease the minimum required energy efficiency'' of the dishwashers in that new class. 42 U.S.C. 6295(o)(1); (Joint Commenters, No. 3145, p. 1–2; Ceres BICEP, No. 2746, p. 1).

As an initial matter, DOE has yet to determine the standards that would be applicable to this new product class. Such standards will be established through DOE's standards-setting rulemaking process that includes opportunities for public comment. In the absence of such a rulemaking, neither DOE nor commenters can conclude that the potentially applicable standards for this new product class will be lower than the standards currently applicable to dishwashers. Data developed by DOE through the testing described in section II.B. of this final rule offer suggestions for what may be possible based on the existing dishwasher models evaluated against the current dishwasher standards as part of the Department's assessment of CEI's petition for a new product class of short cycle dishwashers. The current standards require standard residential dishwashers to not exceed 307 kWh/year and 5.0 gallons per cycle. 10 CFR 430.32(f)(1)(i). DOE's test data indicate that a short cycle product class characterized by a one hour or less cycle could, in theory, operate within the scope of the existing standards. Even with these considerations, DOE emphasizes that EPCA does not prohibit the establishment of a standard for dishwashers in the new product class that is ultimately lower than the standards currently applicable to residential dishwashers.

While some commenters expressed their disagreement with the overall application of the anti-backsliding provision to DOE's activities, DOE maintains that these concerns are too broad and ignore the limitations that EPCA itself places on the scope of the anti-backsliding provision, 42 U.S.C.

6295(o)(1). As stated in the NOPR, ''EPCA's anti-backsliding provision is limited in its applicability with regard to water use to four specified products, *i.e.,* showerheads, faucets, water closets, or urinals. DOE's existing energy conservation standard for dishwashers is comprised of both energy and water use components. As dishwashers are not one of the products listed in anti-backsliding provision with respect to water use, there is no prohibition on DOE specifying a maximum amount of water use for dishwashers that is greater than the existing standard without regard to whether DOE were to establish a separate product class for dishwashers as proposed in this proposed rule.'' 84 FR 33869, 33873 (July 16, 2019); *see* 42 U.S.C. 6295(o)(1).

DOE also found the comments challenging the Department's reading of 42 U.S.C 6295(q) as avoiding 42 U.S.C. 6295(o)(1)'s anti-backsliding provision and evading EPCA's prohibition against backsliding unpersuasive because the statute does not contain such limitations. As DOE explained in the July 2019 NOPR, the term ''which applies'' included in the text of the product class provision undercuts the argument that DOE may only use this provision when there is no standard yet established. By using the present tense, ''a higher or lower standard than that which applies,'' EPCA authorizes DOE to reduce the stringency of the standard currently applicable to the products covered under the newly established separate product class. The applicability of this provision to current standards is further evidenced by the additional reference to standards that are not yet applicable (*i.e.,* standards that ''would apply''). If 42 U.S.C. 6295(q)(1) were only to operate in instances in which standards have not yet been established, there would be no need to separately indicate the applicability to future standards. Nor would there be any purpose to calling out the potential for higher or lower standards since there would not be any standards against which to measure that potential. In this manner, 42 U.S.C. 6295(q) authorizes DOE to reduce the stringency of a currently applicable standard upon making the determinations required by 42 U.S.C. 6295(q).

Additionally, the term ''will apply'' is not by its term limited to the interim period between when the Department establishes a standard for a covered product and when compliance with that standard is required. This time limitation is nowhere expressly stated or implied in EPCA and is nonsensical because the Department would not be taking any further action with regard to the establishment of standards between the time it ''applies'' the standard through rulemaking and when compliance with that standard is required. As noted in the July 2019 NOPR, 42 U.S.C. 6295(q) of EPCA cannot be read to prohibit DOE from establishing standards that allow for technological advances or product features that could yield significant consumer benefits while providing additional functionality (*i.e.,* consumer utility) to the consumer. DOE relied on this concept when, in 2011, DOE established separate energy conservation standards for ventless clothes dryers, reasoning that the ''unique utility'' presented by the ability to have a clothes dryer in a living area where vents are impossible to install (*i.e.,* a high-rise apartment) merited the establishment of a separate product class. 76 FR 22454, 22485 (Apr. 21, 2011). Another example of this that DOE is just beginning to explore, as explained further in the July 2019 NOPR, is network connectivity of covered products. *See also* DOE's Smart Products RFI at 83 FR 46886 (Sept. 18, 2018).

In contrast, DOE's interpretation of 42 U.S.C. 6295(q) recognizes the potential for technological innovation and the development of product features like network mode (which was not contemplated at the time dishwasher standards were initially established) that result in the short term increase in energy consumption but have the potential in the long term to significantly improve energy efficiency overall. 84 FR 33869, 33872 (July 16, 2019). DOE does not think a reasonable reading of the statute would conclude that technology must be held constant to a single point in time.

DOE also stated in the July 2019 NOPR that this interpretation is consistent with DOE's previous recognition of the importance of technological advances that could yield significant consumer benefits in the form of lower energy costs while providing the same functionality to the consumer. In the proposed and supplemental proposed rule to establish standards for residential furnaces, 80 FR 13120, 13138 (Mar. 12, 2015); 81 FR 65720, 65752 (Sept. 23, 2016), DOE stated that tying the concept of a feature to a specific technology would effectively ''lock-in'' the currently existing technology as the ceiling for product efficiency and eliminate DOE's ability to address such technological advances. 81 FR 65720, 65752 (Sept. 23, 2016). The Department finds it unrealistic to set limitations that would ultimately prevent the manufacturing of innovative products sought by consumers.

The State AGs and NYC additionally argued that EPCA allows the exercise of 42 U.S.C. 6295(q)'s authority within the bounds of 42 U.S.C. 6295(o)(1), which means DOE may designate separate product classes when justified under subsection 6295(q) but must do so within the limits of 42 U.S.C.6295(o)(1) by not weakening existing standards. (State AGs and NYC, No. 3136, p. 4) State AGs and NYC explained that if the two sections are in conflict, the newer provision would control. Here the anti-backsliding provision was enacted after the product class provision; therefore, 42 U.S.C. 6295(o)(1)'s prohibition against retreating to less stringent standards limits the exercise of 42 U.S.C. 6295(q)'s product class provision. (*Id.,* pp. 5–6, referencing *Watt,* 451 U.S. at 267; *Hines, Inc.* v. *United States,* 551 F.2d 717, 725 (6th Cir. 1977)) This in turn means DOE must accommodate technological innovation within the same limitations. The commenters cite the creation of the ventless clothes dryer product class as, in their view, an example of DOE working within the limits of EPCA's anti-backsliding prohibition. Commenters asserted that DOE did not establish less stringent standards for this product class because no energy efficiency standards were ''lowered in the creation of that product class as ventless clothes dryers were not previously subject to standards.'' (State AGs and NYC, No. 3136, pp. 5–6 referencing 76 FR 22454, 22485 (Apr. 21, 2011))

DOE does not read these provisions in conflict as these comments suggest. In 2011 DOE determined that ventless clothes dryers offered a unique utility because they provided a means of including a dryer into a living area where traditional vents were impossible to install due to the configuration of high rise apartments. The Department recognized this feature as a unique utility that justified the creation of a separate product class and associated standard for ventless clothes dryers. 76 FR 22454, 22485 (Apr. 21, 2011). What commenters overlook when referencing this rulemaking is that prior to the establishment of the ventless clothes dryers product class, ventless clothes dryers were subject to the standards set for the product class as a whole. However, as these dryers could not at the time be tested using the applicable test procedure, ventless clothes dryers subsequently sought and received waivers from test procedure requirements from the Department. 76 FR 33271 (June 8, 2011).

The very fact that DOE issued waivers to the DOE test procedure for these products means that these products were subject to DOE testing and standards compliance requirements. As DOE noted in a waiver granted to LG in 2008 (73 FR 66641 (Nov. 10, 2008)), commenting stakeholders (AHAM, Miele, and Whirlpool) all stated that ventless clothes dryers cannot meet the DOE efficiency standard and recommended a separate product class and efficiency standard for ventless clothes dryers. DOE responded by acknowledging the commenters' experience in working with this type of product, but noted DOE had not been able to find data as to whether ventless clothes dryers can meet the existing DOE clothes dryer energy conservation standard. DOE further stated that if this type of clothes dryer is indeed unable to meet the standard, DOE cannot, in a waiver, establish a separate product class and associated efficiency level. These actions must be taken in the context of a standards rulemaking. DOE did indeed issue a final rule that included standards for ventless clothes dryers in 2011. 76 FR 22454 (Apr. 21, 2011).

DOE stated in the LG waiver that although it would be feasible to provide LG with an alternative test procedure, that the problem is likely more fundamental than one limited to a needed test procedure change; instead, in spite of technological developments, it was expected (though not definitively known at the time the waiver was issued) that ventless clothes dryers would not meet the DOE energy conservation standard, and that a separate clothes dryer class (with a separate efficiency standard) would have to be established for ventless clothes dryers. Otherwise, a type of product with unique consumer utility could be driven from the market. However, the establishment of product classes cannot be done in a waiver, but only in a standards rulemaking.

DOE therefore, consistent with the long-standing waiver granted to Miele, granted a similar waiver to LG from testing of its ventless clothes dryers. 73 FR 66641, 66642 (Nov. 10, 2008).[13]

Commenters are incorrect that ventless clothes dryers were not subject to any standard. As in the case of ventless clothes dryers, which were subject to standards prior to the creation of a separate product class and separate (less-stringent) standard, DOE continues to read EPCA's provisions together to authorize the establishment of future standards for short cycle dishwasher product class at a level different from the existing standard if necessary.

Moreover, the current standard requires standard residential dishwashers to not exceed 307 kWh/year and 5.0 gallons per cycle for the ''Normal'' cycle. 10 CFR 430.32(f)(1)(i). Consistent with the results of the Department's evaluation of dishwashers offering a 60 to 90 minute ''Quick'' cycle, DOE's has identified an innovative opportunity for the further development of a dishwasher model offering a ''Normal'' cycle of one hour or less. In this final rule, DOE establishes a product class characterized by a cycle of one hour or less for the manufacturer-identified ''Normal'' cycle. Because DOE has not yet considered the appropriate standards for the new product class, the commenters are assuming an outcome of an action DOE has yet to take. As stated above, DOE will consider the appropriate energy use standards for the short cycle product class in a separate rulemaking.

Some commenters turned to case law to support the notion that EPCA's anti-backsliding provision prevents DOE from establishing a new product class. Citing to *NRDC* v. *Abraham,* 355 F.3d 179, 197 (2d Cir. 2004), these commenters claimed that the anti-backsliding provision must be interpreted in light of ''the appliance program's goal of steadily increasing the energy efficiency of covered products'' and Congress's intent to provide a ''sense of certainty on the part of manufacturers as to the required energy efficiency standards.'' (Joint Commenters, No. 3145, p. 2) The State AGs and NYC also argue, based on existing case law, that amendments to EPCA's anti-backsliding provision have steadily increased energy efficiency standards over time. Therefore, DOE may not render the anti-backsliding provision inoperative as it would counter case law and thwart the intent of Congress to maintain stability for future standards. (State AGs and NYC, No. 3136, p. 5; Joint Commenters, No. 3145, p. 2)

Congress crafted EPCA using both present and future-tense language to provide for the creation of new product classes with a level of energy use higher or lower than the product class as a whole that would be justified where the facts supported a differing standard. 42 U.S.C. 6295(q)(1)(B). The product class provision itself demonstrates that other factors such as capacity can be considered when setting a different standard for a new product and that energy efficiency at all cost was not the intent of EPCA. The Attorneys General and Governor Bryant suggest that the one hour or less dishwasher cycle is ''plainly an essential performance characteristic of great utility to consumers.'' (No. 3131, pp. 5–6) Looking to the facts surrounding CEI's petition, as referenced above, and the consumer utility evidenced by a short cycle product class, EPCA authorizes the Secretary to create such a product class, notwithstanding EPCA's anti-backsliding provision.

The State AGs and NYC also contend that EPCA's prohibition against backsliding bars DOE from retroactively asserting that cycle time is a performance feature under 42 U.S.C. 6295(o)(4). (No. 3136, p. 5) Under 42 U.S.C. 6295(o)(4) commenters assert that DOE may not prescribe standards that result in the elimination of ''performance characteristics'' or ''features'' and may designate and prescribe different standards for classes of a covered product if necessary to maintain a ''performance-related feature'' under section 6295(q). These commenters assert that because DOE never previously determined that cycle time was a distinct performance characteristic, the Department cannot make such a determination now that a dishwasher with a cycle of one hour or less is no longer available. (*Id.,* at p. 4) CEC also argued that even if cycle time was a utility and the one hour cycle was not arbitrary, the record does not demonstrate that the existing standards have prevented manufactures from offering consumers a dishwasher with a one-hour cycle, thereby causing the unavailability of such products, 42 U.S.C. 6295(o)(4). This means, according to the commenters, that DOE lacks the statutory authority to create new product features and classes in order to retroactively establish features that CEI speculates may have become unavailable due to decades of lawful standard setting. (CEC, No. 3132, p. 5)

In this final rule, the Department is establishing a product class based on the utility consumers would receive from having a dishwasher characterized by having a ''Normal'' cycle of one hour or less. The Department is not establishing a standard that would result in the unavailability of a feature, which 42 U.S.C. 6295(o)(4) prohibits. Instead, DOE is creating a product class that incentivizes manufacturers to develop a product that can meet consumers' interests by manufacturing a

[13] DOE stated in the 1995 Miele waiver that the standard ''did not apply'' to ventless clothes dryers. *See* 60 FR 9330 (Feb. 17, 1995). While the exact meaning of that statement is not precisely clear, DOE interprets it to mean that DOE would not subject Miele to enforcement action for noncompliance. As DOE correctly points out in the 2008 LG waiver, determining that a product is or is not subject to standards is not a decision that can be made in a test procedure waiver.

dishwasher defined by a one hour or less ''Normal'' cycle that would be subject to energy conservation standards. Whether DOE has previously defined cycle time as a feature for residential dishwashers is irrelevant. DOE has recognized the loss of the short cycle time feature as a result of the increased length of the manufacturer's identified ''Normal'' cycle.

In its initial petition, CEI voiced concern that Federal standards impaired dishwasher cycle times and that dishwashers with shorter ''Normal'' cycle times were no longer available on the market. (CEI Petition, No. 0006 at p. 4) EPCA prohibits DOE from prescribing efficiency standards that would result in the unavailability of any covered product (or class) of performance characteristics (including reliability), features, sizes, capacities and volumes that are substantially the same as those generally available at the time of the Secretary's finding. 42 U.S.C. 6295(o)(4).

Commenters contend that DOE cannot claim that the 42 U.S.C. 6295(o)(4) unavailability provision authorizes DOE to establish the new product class. These commenters assert that the 42 U.S.C. 6295(o)(4) unavailability provision does not authorize DOE to reanimate a feature not currently on the market. (Joint Commenters, No. 3145, p. 8 referencing 84 FR 33869, 33873 (July 16, 2019)) Commenters argue that using this as a justification for creation of a new product class is contrary to the anti-backsliding provision and lacks support in the text of the product class provision. (*Id.*)

DOE is not relying on 42 U.S.C. 6295(o)(4) of EPCA to authorize the creation of a new product class of dishwashers or to establish weaker conservation standards through this rulemaking. EPCA provides that DOE may set standards for different product classes based on features that provide a consumer utility. 42 U.S.C. 6295(q). As stated previously, DOE has determined that the facts supporting a performance-related feature justifying a different standard may change depending on the technology and the utility provided to the consumer, and that consumer demand may cause certain products to disappear from or reappear in the market. DOE has also previously determined that the value consumers receive from a feature is to be determined based on a case-by-case assessment of its own research and information provided through public comment. 80 FR 13120, 13138 (Mar. 12, 2015). Lastly, DOE confirms that once the Department recognizes an attribute of a product as a feature, DOE cannot reasonably set standards that would cause the elimination of that feature. DOE notes that its test data also indicate that some dishwashers are available with a quick cycle that meets these performance characteristics. Establishing the product class characterized by a ''Normal'' cycle of one hour or less will provide manufacturers an opportunity for innovation. By finalizing this rulemaking, DOE will have responded to a gap in the market by establishing a new product class for a short cycle dishwashers. 84 FR 33869, 33873 (July 16, 2019).

C. Other Comments

Some commenters contend that DOE has failed to conduct a proper analysis of the data provided by commenters that justifies the creation of a new product class of dishwashers with a short cycle time. These commenters looked to the data provided by energy efficiency advocates and manufactures to claim that CEI's petition was based on insufficient analyses and relied on anecdotal information, and DOE's reliance on such information could compromise the integrity of the appliance standard and rulemaking process. (CA IOUs, No. 3142, p. 1) DOE also received comments asserting that the proposal failed to consider alternative cycle durations such as 50 or 70 minutes. (State AGs and NYC, No. 3136, p. 11) Throughout this rulemaking, DOE has requested comments from members of the public and has considered the comments received and conducted its own testing and analysis in determining how to proceed in this final rule. Based on its testing data, DOE has recognized that a dishwasher with a short cycle of one hour or less for the ''Normal'' cycle would provide a consumer utility not currently available. While DOE has identified some dishwashers offering ''Quick'' cycles that can accomplish a full cycle of cleaning and drying dishes in 60 to 90 minutes with energy and water use comparable to the existing conservation standards, DOE believes industry can develop a dishwasher with a ''Normal'' cycle to meet the criteria of the new product class.

Other commenters argued that by categorically excluding this proposed action from environmental review, the Department has also violated the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.,* first by failing to follow the applicable regulations and second for applying an inapplicable categorical exclusion. (State AGs and NYC, No. 3136, p. 12) Commenters argue that DOE misplaces its reliance on the proposed categorical exclusion because finalizing the product class would in fact result in a significant impact to the environment and qualify as a major federal action. (Joint Commenters, No. 3145, p. 9; State AGs and NYC, No. 3136 p. 13) Commenters assert that DOE's decision to apply the A5 categorical exclusion, rather than conduct the environmental review required for major federal actions, is arbitrary and capricious for three reasons: (1) There is no standard for the new class of dishwashers, (2) DOE failed to consider circumstances related to the rulemaking that may affect the significance of the environmental effects of the action, and (3) DOE failed to account for the reasonably foreseeable connected and cumulative actions between the creation of a new product class and future rulemakings setting standards for the product class. (State AGs and NYC, No. 3136, pp. 14–16)

DOE maintains that this rulemaking, once finalized, will only establish a new product class for dishwashers with a ''Normal'' cycle of one hour or less from washing through drying. Finalization of the rule will not result in adverse environmental impacts and is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D. This categorical exclusion applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. DOE maintains that establishing a new product class for covered products will not result in a change to the environmental effect of the existing dishwasher product classes.

DOE will determine a standard for the product class established in this final rule that provides for the maximum improvement in energy efficiency that is technologically feasible and economically justified, and will result in a significant conservation of energy. 42 U.S.C. 6295(o)(2)(A). That standard will be developed in a separate rulemaking. This action, which only establishes a product class for dishwashers with a ''Normal'' cycle of one hour or less, therefore falls within the scope of the A5 Categorical Exclusion.

Additionally, commenters stated that DOE also violated the Administrative Procedure Act (APA), 5 U.S.C. 551, *et seq.,* by failing to provide a satisfactory explanation and articulate a rational connection between the facts found and decision made in the NOPR. (State AGs and NYC, No. 3136, p. 9) Commenters argued that the proposal departs from DOE's previous determinations that only standard and compact dishwasher classes were appropriate, meaning DOE must explain why a quick cycle

function is a performance-related feature to meet the burden of such a change. Commenters explain that changing a policy position, which they contend DOE is doing here, also requires good reasons for the reversal and that the new policy is permissible under the statute (*Fox,* 556 U.S. at 515), and an unexplained inconsistency between agency actions is a reason for holding an interpretation to be an arbitrary and capricious change. *Nat'l Cable & Telecomms. Ass'n* v. *Brand X internet Servs.,* 545 U.S. 967, 981 (2005). Commenters conclude that based on the limited explanation provided in the record that DOE has failed to meet this burden. (State AGs and NYC, No. 3136, pp. 10–11)

The Department maintains that it has met the APA's requirements for issuing a final rule and explained its reasoning for establishing a new product class for the one hour or less ''Normal'' cycle dishwasher sufficiently in the notice of proposed rulemaking and this final rule. DOE has responded to the information submitted through the public comment process and concluded that the public would derive a utility from the introduction of dishwasher that can clean normally soiled dishes in a shorter period of time than is presently available. The comments submitted identify a recognizable gap in the market for such a product and many consumers expressed a preference for such a product. (CEI, No. 3137, pp. 2–3)

Some commenters argued that if DOE created a new, less efficient product class for residential dishwashers that such actions would result in significant uncertainty on the part of manufactures, businesses, and consumers. (Ceres BICEP, No. 2746, pp. 3–4) Commenters continued that a new product class would likely result in stranded investments, because manufacturers have already invested heavily in meeting existing conservation standards and responding to consumers' energy and water efficiency interests, and manufactures would essentially be required to abandon these innovations. (AHAM, No. 3188, pp. 1–2, 6; GEA, No. 3189, p. 2; Public Interest Advocacy Collaborative (PIAC), No. 3132, p. 1) Some commenters argued that the new product class would also require manufactures to operate two research and development cycles at significant expense while providing no real benefit to consumers. (ASE, No. 3185, p. 5) These commenters conclude that the costs of such activity also remain unknown as DOE has not proposed any accompanying efficiency standards to the new product class and that this deregulation will increase the market uncertainty for manufactures. (AHAM, No. 3188, p. 6; PIAC, No. 3132, p. 3; Whirlpool, No. 3180, p. 1)

DOE emphasizes that manufactures seeking to push innovation in efficiency will not be forced to abandon their efforts as some commenters claim. This is because no current product would be prohibited as a result of the new product class characterized by the one hour or less ''Normal'' cycle. (CEI, No. 3137, p. 5) Additionally, if consumers do place a higher value on efficiency over cycle duration as some manufacturers claim, manufacturers will continue to have a viable market as those consumers will continue to purchase existing efficient products. Investments only become stranded if consumers value faster products over current models. (*Id.,* pp. 5–6) Understandably, manufacturers that choose to enter this new market will incur expenses in order to satisfy the potential demand created as a result of finalizing the creation of this new product class, but that is a business decision manufacturers will make based on an evaluation of whether doing so would be a worthwhile investment. No company will be forced to enter this market as a result of the new product class. (*Id.,* p. 6)

IV. Conclusion

DOE has concluded that it has the legal authority to establish a separate product class as suggested by CEI pursuant to 42 U.S.C. 6295(q). DOE has created a separate product class for dishwashers characterized by a ''Normal'' cycle of one hour or less as identified by the dishwasher manufacturer for daily, regular, or typical use to completely wash and dry a full load of normally soiled dishes. DOE will consider energy conservation standards and test procedures for this product class in a separate rulemaking.

DOE also proposed to update the table specifying currently applicable dishwasher standards in 10 CFR 430.32(f) in the 2019 NOPR. The current requirement includes a table that specifies the obsolete energy factor requirements for standard and compact dishwashers. This table was intended to be removed in a final rule for dishwasher energy conservation standards published on December 13, 2016, but was inadvertently retained by the amendatory instructions for paragraph (f). 81 FR 90072, 90120. DOE will now remove this table and add a new paragraph (f)(1)(iii) that specifies standard dishwashers with a normal cycle of 60 minutes or less are not currently subject to energy or water conservation standards. Additionally, DOE amends paragraphs (f)(1)(i) through (iii) to clarify the terms ''standard'' and ''compact'' and to include reference to the ANSI/AHAM DW–1–2010 standard, which is the current industry standard referenced in the dishwasher test procedure at 10 CFR part 430, subpart B, appendix C1.

V. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

This regulatory action is a ''significant regulatory action'' under the criteria set out in section 3(f) of Executive Order 12866, ''Regulatory Planning and Review.'' (58 FR 51735 (Oct. 4, 1993)). Accordingly, this regulatory action was subject to review under the Executive order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB). As previously discussed in this preamble, DOE does not anticipate that the creation of a new product class will, in and of itself, result in any quantifiable costs or benefits. Rather, those costs or benefits would derive from the applicable test procedures and energy conservation standards, which the Department will prescribe in separate rulemakings.

B. Review Under Executive Orders 13771 and 13777

On January 30, 2017, the President issued Executive Order (E.O.) 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' (82 FR 9339 (Jan. 30, 2017)). More specifically, the order provides that it is essential to manage the costs associated with the governmental imposition of requirements necessitating private expenditures of funds required to comply with Federal regulations. In addition, on February 24, 2017, the President issued Executive Order 13777, ''Enforcing the Regulatory Reform Agenda.'' (82 FR 12285 (March 1, 2017)). The order requires the head of each agency to designate an agency official as its Regulatory Reform Officer (RRO). Each RRO is tasked with overseeing the implementation of regulatory reform initiatives and policies to ensure that individual agencies effectively carry out regulatory reforms, consistent with applicable law. Further, E.O. 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force is required to make recommendations to the agency head regarding the repeal, replacement, or modification of existing

regulations, consistent with applicable law.

DOE has determined that this final rule is consistent with these Executive orders. The proposed rule granted a petition submitted to DOE by the Competitive Enterprise Institute requesting that DOE establish a product class for dishwashers with ''normal cycle'' times of one hour or less from washing through drying. In this final rule, DOE has established a product class for dishwashers with ''Normal'' cycle time of one hour or less from washing through drying. DOE has designated this rulemaking as ''deregulatory'' under E.O 13771 because it is an enabling regulation pursuant to OMB memo M–17–21. DOE will make a determination of the appropriate standard levels for the product class in a subsequent rulemaking.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment and a final regulatory flexibility analysis (FRFA) for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative effects. Also, as required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. (68 FR 7990). DOE has made its procedures and policies available on the Office of the General Counsel's website at: *http://energy.gov/gc/office-general-counsel.*

DOE reviewed this rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE has concluded that this rule will not have a significant impact on a substantial number of small entities. The factual basis for this determination is as follows:

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 or earns less than the average annual receipts specified in 13 CFR part 121. The threshold values set forth in these regulations use size standards and codes established by the North American Industry Classification System (NAICS) that are available at: *https://www.sba.gov/document/support--table-size-standards.* The threshold number for NAICS classification code 335220, ''Major Household Appliance Manufacturing,'' which includes dishwasher manufacturers, is 1,500 employees.

Most of the companies that manufacture dishwashers are large multinational corporations. DOE collected data from DOE's compliance certification database [14] and surveyed the AHAM member directory to identify potential manufacturers of dishwashers. DOE then consulted publicly-available data, such as Dun and Bradstreet, to determine if those manufacturers meet the SBA's definition of a ''small business.'' Based on this analysis, DOE identified two potential small businesses, but determined that this rule does not impose any compliance or other requirements on any manufacturers, including small businesses. This rulemaking establishes a product class for dishwashers with a ''Normal'' cycle of one hour or less from washing through drying as described in the preamble. The rulemaking does not establish or impose energy conservation standards for the new product class of residential dishwashers that manufacturers will now be required to follow. Such requirements will be established in separate rulemakings where DOE will determine the appropriate standard levels and associated testing procedures. This rule will not result in any subsequent costs to any dishwasher manufacturer. Therefore, DOE concludes that the impacts of this final rule would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of a FRFA is not warranted. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Review Under the Paperwork Reduction Act of 1995

Manufacturers of covered products/equipment generally must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for such products/equipment, including any amendments adopted for those test procedures, on the date that compliance is required. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment. 76 FR 12422 (March 7, 2011); 80 FR 5099 (Jan. 30, 2015). The collection-of-information requirement for certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This rule establishes a product class for dishwashers with a ''Normal'' cycle of one hour or less from washing through drying but does not set conservation standards or establish testing requirements for such dishwashers, and thereby imposes no new information or record keeping requirements. Accordingly, Office of Management and Budget clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

E. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act (NEPA) of 1996, DOE has analyzed this action in accordance with NEPA and DOE's NEPA implementing regulations (10 CFR part 1021). DOE has determined that this rule qualifies for categorical exclusion under 10 CFR part 1021, subpart D, appendix A5 because it is an interpretive rulemaking that does not change the environmental effect of the rule and meets the requirements for application of a categorical exclusion. See 10 CFR 1021.410. Therefore, DOE has determined that promulgation of this rule is not a major Federal action significantly affecting the quality of the human environment within the meaning

[14] *https://www.regulations.doe.gov/certification-data* (Last accessed May 22, 2020).

of NEPA, and does not require an environmental assessment or environmental impact statement.

F. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. (65 FR 13735). EPCA governs and prescribes Federal preemption of State regulations that are the subject of DOE's regulations adopted pursuant to the statute. In such cases, States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) Therefore, Executive Order 13132 requires no further action.

G. Review Under Executive Order 12988

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

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. (Pub. L. 104–4, sec. 201 (codified at 2 U.S.C. 1531)) For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. (62 FR 12820) (This policy is also available at *http://www.energy.gov/gc/office-general-counsel* under ''Guidance & Opinions'' (Rulemaking)) DOE examined the rule according to UMRA and its statement of policy and has determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. Accordingly, no further assessment or analysis is required under UMRA.

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

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

J. Review Under Executive Order 12630, ''Governmental Actions and Interference With Constitutionally Protected Property Rights''

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

K. 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). DOE has reviewed this rule under the OMB and DOE guidelines and has concluded that it is consistent with the applicable policies in those guidelines.

L. Review Under Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the

supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has concluded that the regulatory action in this document, the establishment of a new product class for dishwashers with a ''Normal'' cycle of one hour or less from washing through drying, is not a significant energy action because it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects for this rule.

M. Review Consistent With OMB's Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.'' *Id.* at 70 FR 2667 (Jan. 14, 2005).

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. 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. The ''Energy Conservation Standards Rulemaking Peer Review Report,'' dated February 2007, has been disseminated and is available at the following website: *http://www1.eere.energy.gov/buildings/appliance_standards/peer_review.html.* Because available data, models, and technological understanding have changed since 2007, DOE has engaged in a new peer review of its analytical methodologies.

N. Description of Materials Incorporated by Reference

In this document, DOE incorporates by reference the industry standard published by ANSI/AHAM, titled ''Household Electric Dishwashers,'' ANSI/AHAM DW–1–2010. ANSI/AHAM DW–1–2010 is an industry-accepted standard to measure the energy and water consumption of residential dishwashers and is already incorporated by reference for the current dishwasher test procedure at 10 CFR part 430, subpart B, appendix C1. DOE incorporates by reference this industry consensus standard at 10 CFR 430.32(f), which specifies the energy conservation standards for compact and standard dishwashers, for the purpose of distinguishing the standard and compact product classes pursuant to the industry standard.

Copies of ANSI/AHAM DW–1–2010 may be purchased from AHAM at 1111 19th Street NW, Suite 402, Washington, DC 20036, 202–872–5955, or by going to *http://www.aham.org.*

O. Congressional Notification

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

VI. Approval of the Office of the Secretary

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

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses, Test procedures.

Signing Authority

This document of the Department of Energy was signed on October 19, 2020, by Daniel R. Simmons, 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 October 22, 2020.

Treena V. Garrett,

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

For the reasons set forth in the preamble, DOE amends part 430 of title 10 of the Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

§ 430.3 [Amended]

■ 2. Section 430.3(i)(2) is amended by adding ''§ 430.32 and'' immediately before ''appendix C1''.

■ 3. Section 430.32 is amended by revising paragraph (f) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(f) *Dishwashers.* (1) All dishwashers manufactured on or after May 30, 2013, shall meet the following standard—

(i) Standard size dishwashers shall not exceed 307 kwh/year and 5.0 gallons per cycle. Standard size dishwashers have a capacity equal to or greater than eight place settings plus six serving pieces as specified in ANSI/AHAM DW–1–2010 (incorporated by reference, see § 430.3) using the test load specified in section 2.7 of appendix C1 in subpart B of this part.

(ii) Compact size dishwashers shall not exceed 222 kwh/year and 3.5 gallons per cycle. Compact size dishwashers have a capacity less than eight place settings plus six serving pieces as specified in ANSI/AHAM DW–1–2010 (incorporated by reference, see § 430.3) using the test load specified

in section 2.7 of appendix C1 in subpart B of this part.

(iii) Standard size dishwashers with a ''normal cycle'', as defined in section 1.12 of appendix C1 in subpart B of this part, of 60 minutes or less are not currently subject to energy or water conservation standards. Standard size dishwashers have a capacity equal to or greater than eight place settings plus six serving pieces as specified in ANSI/AHAM DW–1–2010 (incorporated by reference, see § 430.3) using the test load specified in section 2.7 of appendix C1 in subpart B of this part.

(2) [Reserved]

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[FR Doc. 2020–23765 Filed 10–29–20; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 7

[Docket ID OCC–2020–0026]

RIN 1557–AE97

National Banks and Federal Savings Associations as Lenders

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is issuing this final rule to determine when a national bank or Federal savings association (bank) makes a loan and is the ''true lender,'' including in the context of a partnership between a bank and a third party, such as a marketplace lender. Under this rule, a bank makes a loan if, as of the date of origination, it is named as the lender in the loan agreement or funds the loan.

DATES: The final rule is effective on December 29, 2020.

FOR FURTHER INFORMATION CONTACT: Andra Shuster, Senior Counsel, Karen McSweeney, Special Counsel, Alison MacDonald, Special Counsel, or Priscilla Benner, Senior Attorney, Chief Counsel's Office, (202) 649–5490, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. For persons who are deaf or hearing impaired, TTY users may contact (202) 649–5597.

SUPPLEMENTARY INFORMATION:

I. Background

Lending partnerships between national banks or Federal savings associations (banks) and third parties play a critical role in our financial system.[1] These partnerships expand access to credit and provide an avenue for banks to remain competitive as the financial sector evolves. Through these partnerships, banks often leverage technology developed by innovative third parties that helps to reach a wider array of customers. However, there is often uncertainty about how to determine which entity is making the loans and, therefore, the laws that apply to these loans.[2] This uncertainty may discourage banks from entering into lending partnerships, which, in turn, may limit competition, restrict access to affordable credit, and chill the innovation that can result from these relationships. Through this rulemaking, the Office of the Comptroller of the Currency (OCC) is providing the legal certainty necessary for banks to partner confidently with other market participants and meet the credit needs of their customers.

However, the OCC understands that there is concern that its rulemaking facilitates inappropriate 'rent-a-charter' lending schemes—arrangements in which a bank receives a fee to 'rent' its charter and unique legal status to a third party. These schemes are designed to enable the third party to evade state and local laws, including some state consumer protection laws, and to allow the bank to disclaim any compliance responsibility for the loans. These arrangements have absolutely no place in the federal banking system and are addressed by this rulemaking, which holds banks accountable for all loans they make, including those made in the context of marketplace lending partnerships or other loan sale arrangements.

On July 22, 2020, the OCC published a notice of proposed rulemaking (proposal or NPR) to determine when a bank makes a loan.[3] Under the proposal, a bank made a loan if, as of the date of origination, it (1) was named as the lender in the loan agreement or (2) funded the loan.

As the proposal explained, federal law authorizes banks to enter into contracts, to make loans, and to subsequently transfer these loans and assign the loan contracts.[4] The statutory framework, however, does not specifically address which entity makes a loan when the loan is originated as part of a lending partnership involving a bank and a third party, nor has the OCC taken regulatory action to resolve this ambiguity. In the absence of regulatory action, a growing body of case law has introduced divergent standards for resolving this issue, as discussed below. As a result of this legal uncertainty, stakeholders cannot reliably determine the applicability of key laws, including the law governing the permissible interest that may be charged on the loan.

This final rule establishes a clear test for determining when a bank makes a loan, by interpreting the statutes that grant banks their authority to lend. Specifically, the final rule provides that a bank makes a loan when it, as of the date of origination, (1) is named as the lender in the loan agreement or (2) funds the loan.

II. Overview of Comments

The OCC received approximately 4,000 comments on the proposal, the vast majority of which were from individuals using a version of one of three short form letters to express opposition to the proposal. Other commenters included banks, nonbank lenders, industry trade associations, community groups, academics, state government representatives, and members of Congress.

Commenters supporting the proposal stated that the judicial true lender doctrine has led to divergent standards and uncertainty concerning the legitimacy of lending partnerships between banks and third parties. They also stated that, by removing the uncertainty, the OCC would help ensure that banks have the confidence to enter into these lending relationships, which provide affordable credit to consumers on more favorable terms than the alternatives, such as pawn shops or payday lenders, to which underserved communities often turn. Supporting commenters also observed that the proposal would enhance a bank's safety and soundness by facilitating its ability to sell loans. These commenters also noted that the proposal (1) makes clear that the OCC will hold banks accountable for products with unfair, deceptive, abusive, or misleading features that are offered as part of a relationship and (2) is consistent with the OCC's statutory mission to ensure that banks provide fair access to financial services.

Commenters opposing the proposal stated that it would facilitate so-called rent-a-charter schemes, which would

[1] In this rulemaking, use of the terms ''partner'' or ''partnership'' does not connote any specific legal relationship between a bank and a third party, and the terms ''partnership'' and ''relationship'' are used interchangeably to describe a variety of relationships between banks and third parties.

[2] This is often referred to as a question of which entity is the 'true lender.'

[3] 85 FR 44223.

[4] *See* 12 U.S.C. 24(Third), 24(Seventh), 371, 1464; *see also* 12 CFR 7.4008, 34.3, 160.30.

result in increased predatory lending and disproportionately impact marginalized communities. Other opposing commenters stated that the proposal is an attempt by the OCC to improperly regulate nonbank lenders, a role they consider to be reserved exclusively to the states. Opposing commenters also asserted that the OCC did not have sufficient legal authority to issue the proposal and that the proposal violated the Administrative Procedure Act (APA) and 12 U.S.C. 25b.

Both supporting and opposing commenters recommended changes. These recommendations included (1) adopting a test that requires the true lender to have a predominant economic interest in the loan; (2) providing additional ''safe harbor'' requirements to enhance consumer protections (*e.g.,* interest rate caps); (3) clarifying that certain traditional bank lending activities do not fall under the funding prong of the rule (*e.g.,* indirect auto lending and mortgage warehouse lending); (4) providing additional details on how the OCC would supervise these relationships; and (5) stating that the rule will not displace certain federal consumer protection laws and regulations.

The comments are addressed in greater detail below.

III. Analysis

As noted in the prior section, commenters raised a variety of issues for the OCC's consideration. These are discussed below.

A. OCC's Authority To Issue the Rule

Some commenters argued the OCC lacks the legal authority to issue the rule because it would contravene the unambiguous meaning of 12 U.S.C. 85. These commenters believe that section 85 incorporates the common law of usury as of 1864, which they view as requiring courts to look to the substance rather than the form of a transaction. In a similar vein, commenters argued that section 85 incorporates all usury laws of a state, including its true lender jurisprudence. One commenter also argued that the proposal contradicts judicial and administrative precedent interpreting sections 85 and 86.

The OCC disagrees. The rule interprets statutes that authorize banks to lend—12 U.S.C. 24, 371, and 1464(c)—and clarifies how to determine when a bank exercises this lending authority. The OCC has clear authority to reasonably interpret these statutes, which do not specifically address when a bank makes a loan.[5]

Banks do not obtain their lending authority from section 85 or 12 U.S.C. 1463(g). Nor are these statutes the authority the OCC is relying on to issue this rule. The proposal referenced sections 85 and 1463(g) in the regulatory text to ensure that interested parties understand the consequences of its interpretation of sections 24, 371, and 1464(c),[6] including that this rulemaking operates together with the OCC's recently finalized '*Madden*-fix' rulemaking.[7] When a bank makes a loan pursuant to the test established in this regulation, the bank may subsequently sell, assign, or otherwise transfer the loan without affecting the permissible interest term, which is determined by reference to state law.[8]

Other commenters questioned the OCC's authority on different grounds. Some asserted the OCC lacks authority to (1) exempt nonbanks from compliance with state law or (2) preempt state laws that determine whether a loan is made by a nonbank lender. One commenter also asserted that the proposal is an attempt by the OCC to interpret state law. A commenter further argued that the OCC's statutory interpretation is not reasonable, including because the proposal (1) would allow nonbanks to enjoy the benefits of federal preemption without submitting to any regulatory oversight and (2) violates the presumption against preemption, especially in an area of historical state police powers like consumer protection.

This rulemaking does not assert authority over nonbanks, preempt state laws applicable to nonbank lenders, or interpret state law. It interprets federal banking law and has *no* direct applicability to any nonbank entity or activity. Rather, in identifying the true lender, the rule pinpoints key elements of the statutory, regulatory, and supervisory framework applicable to the loan in question. As noted in the proposal, if a nonbank partner is the true lender, the relevant state (and not OCC) would regulate the lending activity, and the OCC would assess the bank's third-party risk management in connection with the relationship itself.

Furthermore, because commenters expressed concern that this rule would undermine state usury caps, it is also important to emphasize that sections 85 and 1463(g) provide a choice of law framework for determining which state's law applies to bank loans and, in this way, incorporate, rather than eliminate, state law. These statutes require that a bank refer to, and comply with, the usury cap established by the laws of the state where the bank is located. Thus, disparities between the usury caps applicable to particular bank loans result primarily from differences in the state laws that impose these caps, not from an interpretation that section 85 or 1463(g) preempt state law.

A commenter also asserted that the OCC's interpretation is not reasonable because it (1) does not solve the problem it claims to remedy, arguing that the proposal itself is unclear and requires banks to undertake a fact-specific analysis and (2) departs from federal cases holding that state true lender law applies to lending relationships between banks and nonbanks.

The OCC believes that this rule provides a simple, bright-line test to determine when a bank has made a loan and, therefore, is the true lender in a lending relationship. The only required factual analysis is whether the bank is named as the lender or funds the loan. The OCC has evaluated various standards established by courts and has determined that a clear, predictable, and easily administrable test is preferable. This test will provide legal certainty, and the OCC's robust supervisory framework effectively targets predatory lending, achieving the same goal as a more complex true lender test.

Several commenters also asserted that the proposal contravenes 12 U.S.C. 1, which charges the OCC with ensuring that banks treat customers fairly. One

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[5] *See Chevron U.S.A., Inc.* v. *Nat. Res. Def. Council, Inc.,* 467 U.S. 837, 843 (1984) (''[I]f the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.''); *see also National Cable & Telecommunications Assoc., et al.,* v. *Brand X internet Services et al.,* 545 U.S. 967 (2005); *Gutierrez-Brizuela* v. *Lynch,* 834 F.3d 1142 (10th Cir. 2016).

[6] Although this rulemaking is not an interpretation of either section 85 or 1463(g), the OCC has clear authority to interpret these statutes, including as a basis for this rulemaking. *See Smiley* v. *Citibank (S.D.), N.A.,* 517 U.S. 735 (1996) (*Smiley*) (deferring to the OCC's reasonable interpretation of section 85's ambiguity with respect to meaning of ''interest''). Section 1463(g) is interpreted *in pari materia* to section 85. *See Gavey Props./762* v. *First Fin. Sav. & Loan Ass'n,* 845 F.2d 519, 521 (5th Cir. 1988) (''Given the similarity of language, the conclusion is virtually compelled that Congress sought to provide federally insured credit institutions with the same 'most favored lender' status enjoyed by national banks.''); 61 FR 50951, 50968 (Sept. 30, 1996) (''OTS and its predecessor, the FHLBB, have long looked to the OCC regulation and other precedent interpreting the national bank most favored lender provision for guidance in interpreting [12 U.S.C. 1463(g)] and OTS's implementing regulation.''); OTS letter from Harris Weinstein, December 24, 1992, 1992 WL 12005275.

[7] *Permissible Interest on Loans That Are Sold, Assigned, or Otherwise Transferred,* 85 FR 33530 (June 2, 2020).

[8] 12 CFR 7.4001(e) and 160.110(d).

commenter also argued that the proposal is inconsistent with the Community Reinvestment Act (CRA) because it encourages predatory lending. As the OCC explained in the proposal, the rule's purpose is to provide legal certainty to expand access to credit, a goal that is entirely consistent with the agency's statutory charge to ensure fair treatment of customers and banks' statutory obligation to serve the convenience and needs of their communities.

B. 12 U.S.C. 25b

Several commenters asserted that the agency should have complied with 12 U.S.C. 25b, which applies when the OCC issues a regulation or order that preempts a state consumer financial law. Some of these commenters argued that the proposal fails to meet the preemption standard articulated in *Barnett Bank of Marion County, N.A.* v. *Nelson, Florida Insurance Commissioner, et al.* (*Barnett*),[9] as incorporated into section 25b. Commenters also argued that (1) section 25b(f) does not exempt the OCC's proposal from the requirements of section 25b because the rule is not limited to banks charging interest and (2) the proposal undermines or contravenes section 25b(h) because it extends preemptive treatment to subsidiaries, affiliates, and agents of banks.

The OCC disagrees: The requirements of section 25b are inapplicable to this rulemaking. Section 25b applies when the Comptroller determines, on a case-by-case basis, that a state consumer financial law is preempted pursuant to the standard for conflict preemption established by the Supreme Court in *Barnett, i.e.,* when the Comptroller makes a preemption determination.[10] This rulemaking does not preempt a state consumer financial law but rather interprets a bank's federal authority to lend. Furthermore, commenters arguing that section 25b(f) (which addresses section 85) does not exempt this rulemaking from the procedures in section 25b and that sections 25b(b)(2), (e), and (h)(2) (which address bank subsidiaries, affiliates, and agents) preclude the agency from issuing this rule are mistaken; this rulemaking is not an interpretation of section 85, nor does it address the applicability of state law to bank subsidiaries, affiliates, or agents.

C. Administrative Procedure Act

Several commenters asserted that, for various reasons, the proposal is arbitrary and capricious and, therefore, in violation of the APA. Some commenters argued that the proposal lacks an evidentiary basis, either entirely or with respect to certain assertions, such as the existence of legal uncertainty. The OCC disagrees. The APA's arbitrary and capricious standard requires an agency to make rational and informed decisions based on the information before it.[11] Furthermore, the standard does not require the OCC to develop or cite empirical or other data to support its rule or wait for problems to materialize before acting.[12] Instead, the OCC may rely on its expertise to address the problems that may arise.[13]

The OCC has decided to issue this rule to resolve the effects of legal uncertainty on banks and their third-party relationships. In this case, the OCC's views are informed by courts' divergent true lender tests and the resulting lack of predictability faced by stakeholders.[14] While the OCC understands its rule may not resolve all legal uncertainty for every loan, this is not a prerequisite for the agency to take this narrowly tailored action.[15] Taking these considerations into account, the OCC has made a rational and informed decision to issue this rule.

Commenters also argued that the OCC's actions violate the APA because the agency has not given notice of its intention to reverse an existing policy or provided the factual, legal, and policy reasons for doing so. Specifically, these commenters referenced the OCC's longstanding policy prohibiting banks from entering into rent-a-charter schemes. This rulemaking does not reverse the OCC's position. The OCC's longstanding and unwavering opposition to predatory lending, including but not limited to predatory lending as part of a third-party relationship, remains intact and strong.[16] In fact, this rulemaking would solve the rent-a-charter issues raised and ensure that banks do not participate in those arrangements. As noted in the proposal, the OCC's statutes and regulations, enforceable guidelines, guidance, and enforcement authority provide robust and effective safeguards against predatory lending when a bank exercises its lending authority. This rule does not alter this framework but rather reinforces its importance by clarifying that it applies to every loan a bank makes and by providing a simple test to identify precisely when a bank has made a loan. If a bank fails to satisfy its compliance obligations, the OCC will not hesitate to use its enforcement authority consistent with its longstanding policy and practice.

Furthermore, the final rule does not change the OCC's expectation that all banks establish and maintain prudent credit underwriting practices and

[9] 517 U.S. 25 (1996).

[10] Twelve U.S.C. 25b(b) also provides (1) a state consumer financial law is preempted if it has a discriminatory effect on national banks, in comparison with the effect of the law on a bank chartered by that state or (2) a state consumer financial law may be preempted by a provision of federal law other than title 62 of the Revised Statutes. *See* 12 U.S.C. 25b(b)(1)(A) and (b)(1)(C), respectively.

[11] *Ass'n of Private Colls. & Univs.* v. *Duncan,* 870 F. Supp. 2d 133, 154 (D.D.C. 2012); *see Motor Vehicle Mfrs. Ass'n of U.S., Inc.* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 52 (1983) (''The agency must explain the evidence which is available, and must offer a 'rational connection between the facts found and the choice made.' '' (quoting *Burlington Truck Lines, Inc.* v. *United States,* 371 U.S. 156, 168 (1962))).

[12] *Stilwell* v. *Office of Thrift Supervision,* 569 F.3d 514, 519 (D.C. Cir. 2009) (''The APA imposes no general obligation on agencies to produce empirical evidence. . . . Moreover, agencies can, of course, adopt prophylactic rules to prevent potential problems before they arise. . . . OTS based its proposal on its long experience of supervising mutual savings associations; its view found support in various comments submitted in response to the proposal.''); *Chamber of Commerce of U.S.* v. *SEC,* 412 F.3d 133, 142 (D.C. Cir. 2005) (holding that the SEC did not have to conduct an empirical study in support of its rulemaking where it based its decision on ''its own and its staff's experience, the many comments received, and other evidence, in addition to the limited and conflicting empirical evidence'').

[13] *FCC* v. *WNCN Listeners Guild,* 450 U.S. 582, 595–96 (1981) (granting deference to the agency's ''forecast of the direction in which future public interest lies''); *U.S. Telecom Ass'n* v. *FCC,* 825 F.3d 674, 732 (D.C. Cir. 2016) (''[A]n agency's predictive judgments about areas that are within the agency's field of discretion and expertise are entitled to *particularly deferential* review, as long as they are reasonable.'' (emphasis in original) (quoting *EarthLink, Inc.* v. *FCC,* 462 F.3d 1, 12 (D.C. Cir. 2006)).

[14] As explained in the proposal, in some cases, the court has concluded that the form of the transaction alone resolves this issue. In other cases, the courts have applied fact-intensive balancing tests, in which they have considered a multitude of factors. However, no factor is dispositive, nor are the factors assessed based on any predictable, bright-line standard. Even when nominally engaged in the same analysis—determining which entity has the ''predominant economic interest'' in the transaction—courts do not necessarily consider all of the same factors or give each factor the same weight. *See* 85 FR at 44224, n.8–15 and accompanying discussion. The comments the agency received from industry representatives further evidence this uncertainty.

[15] *See Taylor* v. *Fed. Aviation Admin.,* 895 F.3d 56, 68 (2018); *cf. Smiley,* 517 U.S. at 743 (stating ''that there was good reason for the Comptroller to promulgate the new regulation, in order to eliminate uncertainty and confusion'').

[16] Commenters also asserted that this rulemaking is inconsistent with OCC Interpretive Letter 1002 (May 13, 2004) (IL 1002), which specifically recognized the relationship between the entity that makes a loan and the applicable legal framework. While IL 1002 provides examples of how to determine which party makes a loan (*e.g.,* the party that funded the loan), it did not purport to establish a determinative true lender test. By establishing such a test, this rulemaking complements IL 1002 and does not represent a reversal of an agency position.

comply with applicable law, even when they partner with third parties. These expectations were in place before the OCC issued its proposal and will remain in place after the final rule takes effect. For these reasons, the final rule does not represent a change in OCC policy.

D. Comments on the Proposed Regulatory Text

As noted previously, the OCC's proposed regulatory text set out a test for determining when a bank has made a loan for purposes of 12 U.S.C. 24, 85, 371, 1463(g), and 1464(c). Under this test, a bank made a loan if, as of the date of origination, it was named as the lender in the loan agreement or funded the loan.

Some commenters supported the rule without change, stating that the proposal provided the clarity needed to determine which entity is the true lender in a lending relationship. Other commenters supported the proposal as a general matter but suggested specific changes, including clarifying that the funding prong does not include certain lending or financing arrangements such as warehouse lending, indirect auto lending (through bank purchases of retail installment contracts (RICs)), loan syndication, and other structured finance.

These commenters are correct that the funding prong of the proposal generally does not include these types of arrangements: They do not involve a bank funding a loan at the time of origination. For example, when a bank purchases a RIC from an auto dealer, as is often the case with indirect auto lending, the bank does not ''fund'' the loan.[17] When a bank provides a warehouse loan to a third party that subsequently draws on that warehouse loan to lend to other borrowers, the bank is not funding the loans to these other borrowers. In contrast, and as noted in the proposal, the bank is the true lender in a table funding arrangement when the bank funds the loan at origination.[18]

Another commenter recommended that the OCC consider the ''safe harbor'' established in the recent settlement between the Colorado Attorney General and several financial institutions and fintech lenders.[19] While we are aware of this settlement, the OCC believes that our approach achieves the goal of legal certainty while providing the necessary safeguards.

One commenter requested that the OCC expressly state in the final rule that the rulemaking is not intended to displace or alter other regulatory regimes, including those that address consumer protection. Another commenter requested that the OCC clarify how account information in true lender arrangements should be reported to consumer reporting agencies under the Fair Credit Reporting Act. As the preamble to the proposal noted, the OCC's rule does not affect the application of any federal consumer financial laws, including, but not limited to, the meaning of the terms (1) ''creditor'' in the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) and Regulation Z (12 CFR part 1026) and (2) ''lender'' in Regulation X (12 CFR part 1024), which implements the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 *et seq.*). Similarly, the OCC's rule does not affect the applicability of the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*), the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*), the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), or their implementing regulations (Regulation C (12 CFR part 1003), Regulation B (12 CFR part 1002), and Regulation V (12 CFR part 1022)), respectively. The OCC recommends that commenters direct questions regarding these statutes and regulations to the Consumer Financial Protection Bureau.

Some commenters stated that the two prongs in the proposal's test would produce contradictory and absurd results. For example, several commenters noted that, under the proposal, two banks could be the true lender (*e.g.,* at origination, one bank is named as the lender on the loan agreement and another bank funds the loan). In response to this comment, we have amended the regulatory text to provide that where one bank is named as the lender in the loan agreement and another bank funds the loan, the bank named as the lender in the loan agreement makes the loan. This approach will provide additional clarity and allow stakeholders, including borrowers, to easily identify the bank that makes the loan. Otherwise, the OCC adopts the regulatory text as proposed.

E. Rent-a-Charter Concerns; Supervisory Expectations

The OCC received multiple comments expressing concern that the proposal would facilitate rent-a-charter relationships and thereby enable nonbank lenders to engage in predatory or otherwise abusive lending practices. These commenters noted that nonbanks are generally not subject to the type of prudential supervision that applies to banks and that usury caps are the most effective method to curb predatory lending by nonbanks. They argued that the OCC's rule would effectively nullify these caps and facilitate the expansion of predatory lending.

As explained above, in a rent-a-charter arrangement, a lender receives a fee to rent out its charter and unique legal status to originate loans on behalf of a third party, enabling the third party to evade state and local laws, such as usury caps and other consumer protection laws. At the same time, the lender disclaims any responsibility for these loans. As a result of these arrangements, consumers can find themselves in debt to an unscrupulous nonbank lender that is subject to very little or no prudential supervision on a loan at an interest rate grossly in excess of the state usury cap.

The OCC agrees that rent-a-charter schemes have no place in the federal financial system but disagrees that this rule facilitates such schemes. As noted above, instead, this proposal would help solve the problem by (1) providing a clear and simple test for determining when a bank makes a loan and (2) emphasizing the robust supervisory framework that applies to *any* loan made by a bank and to all third-party relationships to which banks are a party. As noted above, if a bank fails to satisfy its obligations under this supervisory framework, the OCC will use all the tools at its disposal, including its enforcement authority.[20]

Although the proposal discussed this supervisory framework in detail, it bears repeating because of its importance to

[17] Two commenters requested that the OCC clarify that references to a ''loan'' apply solely to finance arrangements that involve a loan of *money,* such as have been the subject of the bank-nonbank partnership arrangements prompting the proposal, and not to time price sales entered into by retail sellers regulated under applicable state sales finance laws (*e.g.,* RICs). We agree—the rule is intended to apply to loans of money by banks and not to retail sales of goods under RICs.

[18] Although the OCC is confident that its rule provides a clear and simple test for determining who is the true lender, the agency recognizes that, on occasion, there may be additional circumstances in which its application is unclear. In these circumstances, banks with questions should contact the OCC.

[19] Assurance of Discontinuance, *In re Avant of Colorado, LLC and Marlette Funding, LLC* (Aug. 7, 2020), *available at https://coag.gov/app/uploads/2020/08/Avant-Marlette-Colorado-Fully-Executed-AOD.pdf.*

[20] Depending on the structure of the bank and the activities it conducts, other regulators may have oversight roles as well. For example, the Consumer Financial Protection Bureau has exclusive supervisory authority and primary enforcement authority for federal consumer financial laws for banks that are insured depository institutions and have assets greater than $10 billion. *See* 12 U.S.C. 5515. The OCC generally has exclusive supervisory and enforcement authority for banks with assets of $10 billion or less. *See* 12 U.S.C. 5516, 5581(c)(1)(B).

this rulemaking. Every bank is responsible for establishing and maintaining prudent credit underwriting practices that: (1) Are commensurate with the types of loans the bank will make and consider the terms and conditions under which they will be made; (2) consider the nature of the markets in which the loans will be made; (3) provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial responsibility of any guarantor, the nature and value of any underlying collateral, and the borrower's character and willingness to repay as agreed; (4) establish a system of independent, ongoing credit review and appropriate communication to management and to the board of directors; (5) take adequate account of concentration of credit risk; and (6) are appropriate to the size of the institution and the nature and scope of its activities.[21] Moreover, every bank is expected to have loan documentation practices that: (1) Enable the institution to make an informed lending decision and assess risk, as necessary, on an ongoing basis; (2) identify the purpose of a loan and the source of repayment and assess the ability of the borrower to repay the indebtedness in a timely manner; (3) ensure that any claim against a borrower is legally enforceable; (4) demonstrate appropriate administration and monitoring of a loan; and (5) take account of the size and complexity of a loan.[22] Every bank should also have appropriate internal controls and information systems to assess and manage the risks associated with its lending activities, including those that provide for monitoring adherence to established policies and compliance with applicable laws and regulations, as well as internal audit systems.[23]

In addition, a bank's lending must comply with all applicable laws and regulations, including federal consumer protection laws. For example, section 5 of the Federal Trade Commission Act (FTC Act) provides that ''unfair or deceptive acts or practices in or affecting commerce'' are unlawful.[24] The Dodd-Frank Wall Street Reform and Consumer Protection Act also prohibits unfair, deceptive, or ''abusive'' acts or practices.[25] The OCC has taken a number of public enforcement actions against banks for violating section 5 of the FTC Act and will continue to exercise its enforcement authority to address unlawful actions.[26]

Banks also are subject to federal fair lending laws and may not engage in unlawful discrimination, such as ''steering'' a borrower to a higher cost loan on the basis of the borrower's race, national origin, age, or gender. If a bank engages in any unlawful discriminatory practices, the OCC will take appropriate action under the federal fair lending laws.[27] Further, under the CRA regulations, CRA-related lending practices that violate federal fair lending laws, the FTC Act, or Home Ownership and Equity Protection Act, or that evidence other discriminatory or illegal credit practices, can adversely affect a bank's CRA performance rating.[28]

The OCC has also taken significant steps to eliminate predatory, unfair, or deceptive practices in the federal banking system, recognizing that ''[s]uch practices are inconsistent with important national objectives, including the goals of fair access to credit, community development, and stable homeownership by the broadest spectrum of America.'' [29] To address these concerns, the OCC requires banks engaged in lending to take into account the borrower's ability to repay the loan according to its terms.[30] In the OCC's experience, ''a departure from fundamental principles of loan underwriting generally forms the basis of abusive lending: Lending without a determination that a borrower can reasonably be expected to repay the loan from resources other than the collateral securing the loan, and relying instead on the foreclosure value of the borrower's collateral to recover principal, interest, and fees.'' [31]

Additionally, the OCC has cautioned banks about lending activities that may be considered predatory, unfair, or deceptive, noting that many such lending practices are unlawful under existing federal laws and regulations or otherwise present significant safety, soundness, or other risks. These practices include those that target prospective borrowers who cannot afford credit on the terms being offered, provide inadequate disclosures of the true costs and risks of transactions, involve loans with high fees and frequent renewals, or constitute loan ''flipping'' (frequent re-financings that result in little or no economic benefit to the borrower that are undertaken with the primary or sole objective of generating additional fees).[32] Policies and procedures should also be designed to ensure clear and transparent disclosure of the terms of the loan, including relative costs, risks, and benefits of the loan transaction, which helps to mitigate the risk that a transaction could be unfair or deceptive. The NPR also highlighted specific questions that the OCC evaluates as part of its robust supervision of banks' lending relationships.[33]

In addition to this framework targeted at banks' lending activities, the OCC has issued comprehensive guidance on third-party risk management.[34] These standards apply to any relationship between a bank and a third party, including lending relationships, regardless of which entity is the true lender. Pursuant to this guidance, the OCC expects banks to institute appropriate safeguards to manage the risks associated with their third-party relationships.

Under the final rule, this robust supervisory framework will continue to apply to banks that are the true lender in a lending relationship with a third party. Rather than allowing banks to enter into rent-a-charter schemes, the final rule will ensure that banks understand that the OCC will continue

[21] 12 CFR part 30, appendix A, II.D; *see* 12 CFR part 34, appendix A to subpart D.

[22] 12 CFR part 30, appendix A, II.C.

[23] 12 CFR part 30, appendix A, II.A and II.B.

[24] 15 U.S.C. 45; *see also* 12 CFR 7.4008(c), 34.3(c), part 30, appendix C. Further, OCC guidance directly addresses unfair or deceptive acts or practices with respect to banks. *See* OCC Advisory Letter 2002–3, ''Guidance on Unfair or Deceptive Acts or Practices'' (Mar. 22, 2002); OCC Advisory Letter 2003–2, ''Guidelines for National Banks to Guard Against Predatory and Abusive Lending Practices'' (Feb. 21, 2003); OCC Advisory Letter 2003–3, ''Avoiding Predatory and Abusive Lending Practices in Brokered and Purchased Loans'' (Feb. 21, 2003); and OCC Bulletin 2014–37, ''Risk Management Guidance: Consumer Debt Sales'' (Aug. 4, 2014).

[25] Public Law 111–203, tit. X, sections 1031 and 1036, 124 Stat. 2005, 2010 (*codified at* 12 U.S.C. 5531 and 5536). The OCC recently issued a new booklet of the *Comptroller's Handbook* to provide guidance to examiners about the risks of banks and third parties engaging in lending, marketing, or other practices that may constitute unfair or deceptive acts or practices or unfair, deceptive, or abusive acts or practices. *See Comptroller's Handbook,* ''Consumer Compliance, Unfair or Deceptive Acts or Practices and Unfair, Deceptive, or Abusive Acts or Practices'' (June 2020).

[26] *See* 12 U.S.C. 1818(b).

[27] *See* 15 U.S.C. 1691; 42 U.S.C. 3601 *et seq.* As noted above, *supra* note 20, other regulators may have oversight roles as well and can be expected to take appropriate enforcement action to address unlawful action within their jurisdiction.

[28] *See* 12 CFR 25.17; 12 CFR part 25, appendix C, 12 CFR 25.28(c).

[29] OCC Advisory Letter 2003–2.

[30] *See,* 12 CFR 7.4008(b), 34.3(b), part 30, appendix A, II.C.2 and II.D.3.

[31] OCC Advisory Letter 2003–2, at 3.

[32] *See* OCC Advisory Letter 2000–7, ''Abusive Lending Practices'' (July 25, 2000); OCC Advisory Letter 2000–10, ''Payday Lending'' (Nov. 27, 2000); OCC Advisory Letter 2003–2; OCC Advisory Letter 2003–3; and OCC Bulletin 2014–37.

[33] *See* 85 FR at 44227.

[34] *See, e.g.,* OCC Bulletin 2013–29, ''Third-Party Relationships: Risk Management Guidance'' (Oct. 30, 2013); OCC Bulletin 2020–10, ''Third-Party Relationships: Frequently Asked Questions to Supplement OCC Bulletin 2013–29'' (Mar. 5, 2020).

to hold banks accountable for their lending activities.

IV. Regulatory Analyses

Paperwork Reduction Act. In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* the OCC may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC has reviewed the final rule and determined that it will not introduce any new or revise any existing collection of information pursuant to the PRA. Therefore, no submission will be made to OMB for review.

Regulatory Flexibility Act. The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires an agency, in connection with a final rule, to prepare a Final Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the Small Business Administration (SBA) for purposes of the RFA to include commercial banks and savings institutions with total assets of $600 million or less and trust companies with total assets of $41.5 million or less) or to certify that the final rule would not have a significant economic impact on a substantial number of small entities.

The OCC currently supervises approximately 745 small entities. The OCC expects that all of these small entities would be impacted by the rule. While this final rule could affect how banks structure their current or future third-party relationships as well as the amount of loans originated by banks, the OCC believes the costs associated with any administrative changes in bank lending policies and procedures would be *de minimis.* Banks already have systems, policies, and procedures in place for issuing loans when third parties are involved. It takes significantly less time to amend existing policies than to create them, and the OCC does not expect any needed adjustments will involve an extraordinary demand on a bank's human resources. In addition, any costs would likely be absorbed as ongoing administrative expenses. Therefore, the OCC certifies that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a Final Regulatory Flexibility Analysis is not required.

Unfunded Mandates Reform Act. Consistent with the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1532, the OCC considers whether a final rule includes 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 million adjusted for inflation (currently $157 million) in any one year. The final rule does not impose new mandates. Therefore, the OCC concludes that implementation of the final rule would not result in an expenditure of $157 million or more annually by state, local, and tribal governments, or by the private sector.

Riegle Community Development and Regulatory Improvement Act. Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA), 12 U.S.C. 4802(a), in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the OCC must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA, 12 U.S.C. 4802(b), requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. This final rule imposes no additional reporting, disclosure, or other requirements on insured depository institutions, and therefore, section 302 is not applicable to this rule.

Congressional Review Act. For purposes of the Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.,* the Office of Information and Regulatory Affairs (OIRA) of the OMB determines whether a final rule is a ''major rule,'' as that term is defined at 5 U.S.C. 804(2). OIRA has determined that this final rule is not a major rule. As required by the CRA, the OCC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

Administrative Procedure Act. The APA, 5 U.S.C. 551 *et seq.,* generally requires that a final rule be published in the **Federal Register** not less than 30 days before its effective date. This final rule will be effective 60 days after publication in the **Federal Register**, which meets the APA's effective date requirement.

List of Subjects in 12 CFR Part 7

Computer technology, Credit, Derivatives, Federal savings associations, Insurance, Investments, Metals, National banks, Reporting and recordkeeping requirements, Securities, Security bonds.

Office of the Comptroller of the Currency

For the reasons set out in the preamble, the OCC amends 12 CFR part 7 as follows.

PART 7—ACTIVITIES AND OPERATIONS

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

Authority: 12 U.S.C. 1 *et seq.,* 25b, 29, 71, 71a, 92, 92a, 93, 93a, 95(b)(1), 371, 371d, 481, 484, 1463, 1464, 1465, 1818, 1828(m) and 5412(b)(2)(B).

■ 2. Add § 7.1031 to read as follows:

§ 7.1031 National banks and Federal savings associations as lenders.

(a) For purposes of this section, *bank* means a national bank or a Federal savings association.

(b) For purposes of sections 5136 and 5197 of the Revised Statutes (12 U.S.C. 24 and 12 U.S.C. 85), section 24 of the Federal Reserve Act (12 U.S.C. 371), and sections 4(g) and 5(c) of the Home Owners' Loan Act (12 U.S.C. 1463(g) and 12 U.S.C. 1464(c)), a bank makes a loan when the bank, as of the date of origination:

(1) Is named as the lender in the loan agreement; or

(2) Funds the loan.

(c) If, as of the date of origination, one bank is named as the lender in the loan agreement for a loan and another bank funds that loan, the bank that is named as the lender in the loan agreement makes the loan.

Brian P. Brooks,

Acting Comptroller of the Currency.

[FR Doc. 2020–24134 Filed 10–29–20; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 150

Burlington International Airport, South Burlington VT; Approval of Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notification.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the City of Burlington, Vermont under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979. These findings are made in recognition of the description of federal and non-federal responsibilities in Senate Report No. 96–52 (1980). On October 14, 2020, the Airports Division Deputy Director approved the Burlington International Airport noise compatibility program. This supersedes the approval issued August 27, 2020. All of the proposed program elements were approved.

DATES: *Effective Date:* The effective date of the FAA's approval of the Burlington International Airport noise compatibility program is October 30, 2020.

FOR FURTHER INFORMATION CONTACT: Richard Doucette, Federal Aviation Administration, New England Region, Airports Division, 1200 District Avenue, Burlington, Massachusetts 01803, Telephone (781) 238–7613, Email: *richard.doucette@faa.gov.*

Documents reflecting this FAA action may be obtained from the same individual. The Noise Compatibility Plan and supporting information can also be found at *www.btvsound.com.*

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Burlington International Airport noise compatibility program, effective October 30, 2020.

Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter the Act), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps.

The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with 14 CFR part 150 is a local program, not a federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of the part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

(a) The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

(b) Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

(c) Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the federal government; and

(d) Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator as prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute a FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action.

Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where Federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Burlington, Massachusetts.

The Burlington International Airport study contains a proposed noise compatibility program comprised of actions designed for implementation by airport management and adjacent jurisdictions. The Burlington International Airport, South Burlington, Vermont requested that the FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act. The FAA began its review of the program on April 15, 2020, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such a program within the 180-day period shall be deemed to be an approval of such a program.

The submitted program contained 9 noise mitigation measures, including 2 to be removed. The FAA completed its review and determined that the procedural and substantive requirements of the Act and Part 150 have been satisfied. All 7 recommended measures were approved, and 2 recommended for removal were approved for removal. The new program will de-emphasize land acquisition in lieu of sound insulation, as the primary noise mitigation measure.

The Airports Division originally approved the program on August 27, 2020. After issuance of the Record of Approval, the FAA discussed its implementation with the City of Burlington. Based on this discussion, the FAA made two small revisions to the Record of Approval and issued a revised approval on October 14, 2020. These revisions clarify FAA funding of the Purchase Assurance and Sales Assistance programs (measures #6 and #7). That prior approval is superseded by issuance of a new Record of Approval on October 14, 2020.

FAA's determinations are set forth in detail in a Record of Approval approved on October 14, 2020. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of Burlington International Airport, South Burlington, Vermont.

Issued in Burlington, Massachusetts on October 14, 2020.

Julie Seltsam-Wilps,

Airports Division Deputy Director, FAA New England Region.

[FR Doc. 2020–23299 Filed 10–29–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–715]

Schedules of Controlled Substances: Placement of Oliceridine in Schedule II

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Interim final rule, with request for comments.

SUMMARY: On August 7, 2020, the U.S. Food and Drug Administration approved a new drug application for oliceridine, chemically known as *N*-[(3-methoxythiophen-2-yl)methyl] ({2-[(9*R*)-9-(pyridin-2-yl)-6-oxaspiro [4.5]decan-9-yl]ethyl})amine fumarate. The Department of Health and Human Services provided the Drug Enforcement Administration (DEA) with a scheduling recommendation to place oliceridine in schedule II of the Controlled Substances Act (CSA). In accordance with the CSA, as revised by the Improving Regulatory Transparency for New Medical Therapies Act, DEA is hereby issuing an interim final rule placing oliceridine, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers and salts is possible, in schedule II of the CSA.

DATES: The effective date of this rulemaking is October 30, 2020. Interested persons may file written comments on this rulemaking in accordance with 21 U.S.C. 811(j)(3) and 21 CFR 1308.43(g). Electronic comments must be submitted, and written comments must be postmarked, on or before November 30, 2020. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

Interested persons may file a request for hearing or waiver of hearing in accordance with 21 U.S.C. 811(j)(3) and 21 CFR 1308.44. Requests for hearing and waivers of an opportunity for a hearing or to participate in a hearing must be received on or before November 30, 2020.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–715'' on all correspondence, including any attachments.

- *Electronic comments:* The Drug Enforcement Administration encourages that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.
- *Paper comments:* Paper comments that duplicate the electronic submission are not necessary and are discouraged. Should you wish to mail a paper comment *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, VA 22152.
- *Hearing requests:* All requests for hearing and waivers of participation must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing and waivers of participation should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Scott A. Brinks, Regulatory Drafting and Policy Support Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–3261.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA) for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all of the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify the confidential business information to be redacted within the comment.

Comments containing personal identifying information and confidential business information identified as directed above will generally be made publicly available in redacted form. If a comment has so much confidential business information or personal identifying information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document and supplemental information, including the complete Department of Health and Human Services (HHS) and DEA eight-factor analyses, to this interim final rule (IFR) are available at *http://www.regulations.gov* for easy reference.

Request for Hearing or Appearance; Waiver

Pursuant to 21 U.S.C. 811(a), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (APA), 5 U.S.C. 551–559. 21 CFR 1308.41–1308.45; 21 CFR part 1316, subpart D. Interested persons may file requests for a hearing or notices of intent to participate in a hearing in conformity with the requirements of 21 CFR 1308.44 (a) or (b), and include a statement of interest in the proceeding and the objections or issues, if any, concerning which the person desires to be heard. Any interested person may file a waiver of an opportunity for a hearing or to participate in a hearing together with a written statement regarding the interested person's position on the

matters of fact and law involved in any hearing as set forth in 21 CFR 1308.44(c).

All requests for a hearing and waivers of participation must be sent to DEA using the address information provided above.

Background and Legal Authority

Under the Improving Regulatory Transparency for New Medical Therapies Act, Public Law 114–89, 2(b), 129 Stat. 698, 700 (2015), DEA is required to commence an expedited scheduling action with respect to certain new drugs approved by the U.S. Food and Drug Administration (FDA). As provided in 21 U.S.C. 811(j), this expedited scheduling is required where both of the following conditions apply: (1) The Secretary of the Department of Health and Human Services (the Secretary) has advised DEA that an application for a new drug has been submitted for a drug that has a stimulant, depressant, or hallucinogenic effect on the central nervous system, and that it appears that such drug has an abuse potential; and, (2) the Secretary recommends that DEA control the drug in schedule II, III, IV, or V pursuant to 21 U.S.C. 811(a) and (b). In these circumstances, DEA is required to issue an IFR controlling the drug within 90 days.

The law further states that the 90-day timeframe starts the later of (1) the date DEA receives the HHS scientific and medical evaluation/scheduling recommendation, or (2) the date DEA receives notice of the application approval by HHS. In addition, the law specifies that the rulemaking shall become immediately effective as an IFR without requiring DEA to demonstrate good cause therefor. Thus, the purpose of subsection (j) is to speed the process by which DEA schedules newly approved drugs that are currently either in schedule I or not controlled (but which have sufficient abuse potential to warrant control) so that such drugs may be marketed without undue delay following FDA approval.[1]

Subsection (j) further provides that the IFR shall give interested persons the opportunity to comment and to request a hearing. After the conclusion of such proceedings, DEA must issue a final rule in accordance with the scheduling criteria of subsections 21 U.S.C. 811(b), (c), and (d) and 21 U.S.C. 812(b).

On November 2, 2017, Trevena, Inc. (Sponsor) submitted an initial New Drug Application (NDA) to FDA for oliceridine that was subsequently resubmitted on February 7, 2020. FDA determined that oliceridine is a new molecular entity, and HHS determined that oliceridine has a depressant effect on the central nervous system. On August 7, 2020, FDA approved the NDA for oliceridine for medical use as an intravenous drug for the management of acute pain severe enough to require an intravenous opioid analgesic and for patients for whom alternative treatments are inadequate.

Determination To Schedule Oliceridine

On July 27, 2020, DEA received a scientific and medical evaluation document from HHS prepared by FDA related to oliceridine, titled: ''Basis for the Recommendation to Control Oliceridine and its Salts in Schedule II of the Controlled Substances Act.'' Pursuant to 21 U.S.C. 811(b), this document contained an eight-factor analysis of the abuse potential of oliceridine, along with HHS's recommendation to control oliceridine under schedule II of the CSA. Subsequently, on August 7, 2020, DEA received notification from HHS that FDA had approved an NDA for oliceridine (OLINVYK).

In response, DEA reviewed the scientific and medical evaluation and scheduling recommendation provided by HHS, along with all other relevant data, and completed its own eight-factor review document pursuant to 21 U.S.C. 811(c). DEA concluded that oliceridine met the 21 U.S.C. 812(b)(2) criteria for placement in schedule II of the CSA.

Pursuant to subsection 811(j), and based on HHS's recommendation, the NDA approval by HHS/FDA, and DEA's determination, DEA is issuing this IFR to schedule oliceridine as a schedule II controlled substance under the CSA.

Included below is a brief summary of each factor as analyzed by HHS and DEA, and as considered by DEA in its scheduling action. Please note that both the DEA and HHS analyses are available in their entirety under ''Supporting Documents'' in the public docket for this IFR at *http://www.regulations.gov,* under Docket Number ''DEA–715.'' Full analysis of, and citations to, the information referenced in the summary may also be found in the supporting and related material.

1. *Its Actual or Relative Potential for Abuse:* Oliceridine is a new molecular entity that has not been marketed in the United States or any other country. Thus, information about the diversion and actual abuse of oliceridine is limited. Oliceridine is currently not available for medical treatment, has not been diverted from legitimate sources, and individuals have not taken this substance in amounts sufficient to create a hazard to public health and safety. DEA notes that there are no reports for oliceridine in the National Forensic Laboratory Information System (NFLIS),[2] which collects drug identification results from drug cases submitted to and analyzed by Federal, State, and local forensic laboratories. There were also no reports in DEA's laboratory drug evidence data system of record, STARLiMS.[3]

According to the legislative history of the CSA, one of the criteria by which DEA should assess actual or relative potential for abuse is whether the substance in question ''is so related in its action to a substance already listed as having a potential for abuse to make it likely that it will have the same potential for abuse as such substance, thus making it reasonable to assume that there may be significant diversions from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community.'' [4] As stated by HHS, oliceridine is a high-affinity mu opioid agonist that produces behavioral effects similar to other mu opioid agonists, such as the schedule II opioid morphine. Moreover, in a rat drug discrimination study, oliceridine generalized to morphine, showing that oliceridine has opioid-like properties. In a clinical study investigating the abuse potential of oliceridine, HHS concluded that oliceridine produced subjective responses that were similar to those for morphine. Specifically, like morphine, oliceridine produced positive subjective responses and euphoria-related adverse events in clinical studies. Together, this

[1] Given the parameters of subsection (j), in DEA's view, it would not apply to a reformulation of a drug containing a substance currently in schedules II through V for which an NDA has recently been approved.

[2] NFLIS represents an important resource in monitoring illicit drug trafficking, including the diversion of legally manufactured pharmaceuticals into illegal markets. NFLIS is a comprehensive information system that includes data from forensic laboratories that handle more than 96 percent of an estimated 1.0 million distinct annual State and local drug analysis cases. NFLIS includes drug chemistry results from completed analyses only. While NFLIS data is not direct evidence of abuse, it can lead to an inference that a drug has been diverted and abused. *See* 76 FR 77330, 77332 (Dec. 12, 2011). NFLIS data were queried on July 28, 2020.

[3] On October 1, 2014, DEA implemented STARLiMS (a web-based, commercial laboratory information management system) to replace the System to Retrieve Information from Drug Evidence (STRIDE) as its laboratory drug evidence data system of record. DEA laboratory data submitted after September 30, 2014, are reposited in STARLiMS. STARLiMS data were queried on July 28, 2020.

[4] Comprehensive Drug Abuse Prevention and Control Act of 1970, H.R. Rep. No. 91–1444, 91st Cong., Sess. 1 (1970), reprinted in U.S.C.C.A.N. 4566, 4603.

evidence demonstrates that oliceridine is related in action and effect to the schedule II substance morphine, and can therefore be expected to have a similar potential for abuse.

2. *Scientific Evidence of Its Pharmacological Effects, if Known:* Oliceridine has high affinity for the mu-opioid receptor and does not bind to any other receptors that are typically associated with abuse, such as kappa and delta opioid receptors, cannabinoid receptors, GABAergic receptors, or other ion channels. According to HHS, general behavioral studies in animals indicate that oliceridine produces behavioral and motor effects similar to those of morphine, a schedule II substance. Additionally, oliceridine produces self-administration in rats. Furthermore, in a drug discrimination study used to predict subjective effects in humans, oliceridine mimicked the stimulus effects of morphine. In a human abuse potential (HAP) study, therapeutic and supratherapeutic doses of oliceridine produced euphoria, somnolence, and paresthesia. These adverse events are consistent with those of other schedule II opioids such as morphine. In other clinical studies, adverse events such as somnolence, sedation, anxiety, restlessness, and paresthesia were seen in subjects treated with oliceridine. As concluded by HHS, results from preclinical and clinical studies indicate that oliceridine has abuse potential similar to morphine.

3. *The State of Current Scientific Knowledge Regarding the Drug or Other Substance:* Oliceridine is a new molecular entity, chemically known as *N*-[(3-methoxythiophen-2-yl)methyl]({2-[(9*R*)-9-(pyridin-2-yl)-6-oxaspiro[4.5]decan-9-yl]ethyl})amine fumarate. It has a molecular formula of $C_{22}H_{30}N_2O_2S.C_4H_4O_4$. Oliceridine is a white to lightly-colored solid that is sparingly soluble in water. On August 7, 2020, FDA approved an NDA for oliceridine for medical use to manage acute pain severe enough to require an intravenous opioid analgesic and for which alternative treatments are inadequate. Thus, oliceridine has an accepted medical use in the United States. Oliceridine will be marketed as an intravenous medication formulated in vials containing 1, 2, or 30 mg of oliceridine.

4. *Its History and Current Pattern of Abuse:* There is no information available relating to the history and current pattern of abuse of oliceridine, since this drug is not currently marketed in any country. HHS notes that oliceridine produces abuse-related signals, such as euphoria and somnolence, and abuse potential similar to that of schedule II controlled substance morphine. DEA searched NFLIS and STARLiMS databases for oliceridine encounters. Consistent with the fact that oliceridine is a new molecular entity, these databases had no records of encounters of oliceridine by law enforcement.

5. *The Scope, Duration, and Significance of Abuse:* Oliceridine is currently not marketed in any country. Thus, information on the scope, duration, and significance of abuse for oliceridine is lacking. However, as stated by HHS, data from animal and human studies indicate that oliceridine has abuse potential similar to morphine. Therefore, upon marketing, oliceridine scope of abuse is expected to be similar to morphine.

6. *What, if any, Risk There is to the Public Health:* The extent of abuse potential of a drug is an indication of its public health risk. Data from the preclinical and clinical studies suggest that the abuse potential and physical or psychological dependence potential of oliceridine are similar to the schedule II substance morphine. Thus, oliceridine upon its availability for marketing would be expected to create a public health risk.

7. *Its Psychic or Physiological Dependence Liability:* Physical dependence for oliceridine was tested in an animal toxicity study. According to HHS, the animal toxicity study using rats demonstrated dose-dependent decreases in food consumption and body weight as well as classic opioid withdrawal signs from discontinuation of oliceridine. In a rat self-administration study as well as in clinical studies, oliceridine produced rewarding effects similar to morphine. Based on these studies, HHS stated that oliceridine may produce physical and psychological dependence.

8. *Whether the Substance is an Immediate Precursor of a Substance Already Controlled under the CSA:* Oliceridine is not an immediate precursor of any controlled substance, as defined in 21 U.S.C. 802(23).

Conclusion: After considering the scientific and medical evaluation conducted by HHS, HHS's scheduling recommendation, and its own eight-factor analysis, DEA has determined that these facts and all relevant data constitute substantial evidence of a potential for abuse of oliceridine. As such, DEA hereby schedules oliceridine as a controlled substance under the CSA.

Determination of Appropriate Schedule

The CSA outlines the findings required to place a drug or other substance in any particular schedule (I, II, III, IV, or V). 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the Assistant Secretary for Health of HHS and review of all available data, the Acting Administrator of DEA, pursuant to 21 U.S.C. 812(b)(2), finds that:

1. Oliceridine Has a High Potential for Abuse

Oliceridine is a mu-opioid receptor agonist and produces behavioral effects that are similar to those of morphine (schedule II opioid substance) in animals and humans. A self-administration study in animals demonstrated that oliceridine produced self-administration that was comparable to morphine. Additionally, a drug-discrimination study in animals demonstrated that oliceridine generalized to morphine, indicating that it has mu-opioid receptor agonist properties. Results from a HAP study showed that oliceridine produces positive subjective effects as well as adverse events such as euphoria, similar to that of morphine, a schedule II substance with a high potential for abuse. Lastly, clinical studies in healthy individuals indicate that oliceridine produces abuse-related adverse events such as euphoria and sedation. These data collectively indicate that oliceridine has a high potential for abuse similar to the schedule II substance morphine.

2. Oliceridine Has a Currently Accepted Medical Use in the United States

FDA recently approved a NDA for oliceridine for the management of acute pain severe enough to require an intravenous opioid analgesic and for patients for whom alternative treatments are inadequate. Thus, oliceridine has a currently accepted medical use in treatment in the United States.

3. Abuse of Oliceridine May Lead To Severe Psychological or Physical Dependence

Chronic administration of oliceridine in rats followed by drug discontinuation produced classic opioid withdrawal signs, similar to that of schedule II drug morphine. This study would indicate oliceridine's potential to cause physical dependence similar to that of morphine. Oliceridine also produces self-administration in rats and positive subjective responses in a HAP study. These results parallel those produced by morphine and suggest that oliceridine can also produce psychological dependence. These data collectively suggest that oliceridine abuse may lead to psychological and physical

dependence similar to that of schedule II opioids.

Based on these findings, the Acting Administrator of DEA concludes that oliceridine warrants control in schedule II of the CSA. 21 U.S.C. 812(b)(2).

Requirements for Handling Oliceridine

Oliceridine is subject to the CSA's schedule II regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, dispensing, importing, exporting, research, and conduct of instructional activities and chemical analysis with, and possession involving schedule II substances, including the following:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, dispenses, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) oliceridine, or who desires to handle oliceridine, must be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958 and in accordance with 21 CFR parts 1301 and 1312. Any person who currently handles or intends to handle oliceridine, and is not registered with DEA, must submit an application for registration and may not continue to handle oliceridine, unless DEA has approved the application for registration, pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312.

2. *Quota.* Only registered manufacturers are permitted to manufacture oliceridine in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303.

3. *Disposal of stocks.* Any person who does not desire or is not able to maintain a schedule II registration must surrender all quantities of currently held oliceridine, or may transfer all quantities of currently held oliceridine to a person registered with DEA in accordance with 21 CFR part 1317, in addition to all other applicable Federal, State, local, and tribal laws.

4. *Security.* Oliceridine is subject to schedule II security requirements and must be handled and stored pursuant to 21 U.S.C. 821 and 823 and in accordance with 21 CFR 1301.71–1301.93.

5. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of oliceridine must comply with 21 U.S.C. 825 and 958(e) and be in accordance with 21 CFR part 1302.

6. *Inventory.* Every DEA registrant who possesses any quantity of oliceridine must take an inventory of oliceridine on hand, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

Any person who becomes registered with DEA to handle oliceridine must take an initial inventory of all stocks of controlled substances containing oliceridine on hand on the date the registrant first engages in the handling of controlled substances, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

After the initial inventory, every DEA registrant must take a new inventory of all stocks of controlled substances (including oliceridine) on hand every two years, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

7. *Records and Reports.* Every DEA registrant must maintain records and submit reports for oliceridine, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR parts 1304, 1312, and 1317.

8. *Orders for oliceridine.* Every DEA registrant who distributes oliceridine is required to comply with order form requirements, pursuant to 21 U.S.C. 828, and in accordance with 21 CFR part 1305.

9. *Prescriptions.* All prescriptions for oliceridine or products containing oliceridine must comply with 21 U.S.C. 829, and be issued in accordance with 21 CFR parts 1306 and 1311, subpart C.

10. *Manufacturing and Distributing.* In addition to the general requirements of the CSA and DEA regulations that are applicable to manufacturers and distributors of schedule II controlled substances, such registrants should be advised that (consistent with the foregoing considerations) any manufacturing or distribution of oliceridine may only be for the legitimate purposes consistent with the drug's labeling, or for research activities authorized by the Federal Food, Drug, and Cosmetic Act, as applicable, and the CSA.

11. *Importation and Exportation.* All importation and exportation of oliceridine must be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

12. *Liability.* Any activity involving oliceridine not authorized by, or in violation of, the CSA or its implementing regulations, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Administrative Procedure Act

Public Law 114–89 was signed into law, amending 21 U.S.C. 811. This amendment provides that in cases where a new drug is (1) approved by HHS, and (2) HHS recommends control in CSA schedule II–V, DEA shall issue an IFR scheduling the drug within 90 days. Additionally, the law specifies that the rulemaking shall become immediately effective as an IFR without requiring DEA to demonstrate good cause. Therefore, DEA has determined that the notice and comment requirements of section 553 of the APA, 5 U.S.C. 553, do not apply to this scheduling action.

Executive Orders 12866, 13563, and 13771, Regulatory Planning and Review, Improving Regulation and Regulatory Review, and Reducing Regulation and Controlling Regulatory Costs

In accordance with 21 U.S.C. 811(a) and (j), this scheduling action is subject to formal rulemaking procedures performed ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the procedures and criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order (E.O.) 12866 and the principles reaffirmed in E.O. 13563.

This IFR is not an E.O. 13771 regulatory action pursuant to E.O. 12866 and OMB guidance.[5]

Executive Order 12988, Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This rulemaking does not have federalism implications warranting the application of E.O. 13132. The rule does 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.

[5] Office of Management and Budget, Executive Office of The President, Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, Titled ''Reducing Regulation and Controlling Regulatory Costs'' (Feb. 2, 2017).

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This rule does not have tribal implications warranting the application of E.O. 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) applies to rules that are subject to notice and comment under section 553(b) of the APA. Under 21 U.S.C. 811(j), DEA is not required to publish a general notice of proposed rulemaking. Consequently, the RFA does not apply to this IFR.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* DEA has determined that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted for inflation) in any one year.'' Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. This action does not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act (CRA), 5 U.S.C. 804. This rule does not result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign based companies in domestic and export markets. However, pursuant to the CRA, DEA has submitted a copy of this IFR to both Houses of Congress and to the Comptroller General.

List of Subjects

21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, DEA amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. Amend § 1308.12 by:
■ a. Redesignating paragraph (c)(18) through (c)(29) as (c)(19) through (c)(30);
■ b. Adding new paragraph (c)(18).

The addition to read as follows:

§ 1308.12 Schedule II.

* * * * *

(c) * * *

(18) Oliceridine (*N*-[(3-methoxythiophen-2-yl)methyl] ({2-[(9*R*)-9-(pyridin-2-yl)-6-oxaspiro [4.5]decan-9-yl]ethyl})amine fumarate) 9245

* * * * *

Timothy J. Shea,

Acting Administrator.

[FR Doc. 2020–22762 Filed 10–29–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[Docket ID: DOD–2020–HA–0050]

RIN 0720–AB83

TRICARE Coverage of National Institute of Allergy and Infectious Disease Coronavirus Disease 2019 Clinical Trials

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Interim final rule with request for comments.

SUMMARY: The Assistant Secretary of Defense for Health Affairs (ASD(HA)) issues this interim final rule (IFR) with request for comments to temporarily modify the TRICARE regulation by adding coverage for National Institute of Allergy and Infectious Disease (NIAID)-sponsored clinical trials for the treatment or prevention of coronavirus disease 2019 (COVID–19).

DATES: *Effective date:* This interim final rule is effective on October 30, 2020 through the end of the President's national emergency regarding COVID–19 (Proclamation 9994, 85 FR 15337 (Mar. 18, 2020)). The ASD(HA) will publish a document announcing the expiration date.

Comment date: Comments are invited and must be submitted on or before November 30, 2020.

ADDRESSES: You may submit comments, identified by docket number and/or Regulation Identification Number (RIN) number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* The DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name and docket number or RIN 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: Erica Ferron, Medical Benefits and Reimbursement Section, 303–676–3626, *erica.c.ferron.civ@mail.mil.*

SUPPLEMENTARY INFORMATION: *Expiration Date:* Unless extended after consideration of submitted comments, this IFR will cease to be in effect upon termination of the President's declared national emergency regarding COVID–19, in accordance with applicable law (50 U.S.C.1622(a)).

If the ASD(HA) determines it would be appropriate to make these changes permanent, the ASD(HA) will follow-up with final rulemaking. The ASD(HA) will publish a document in the **Federal Register** announcing the expiration date.

I. Executive Summary

A. Purpose of the Rule

A novel coronavirus (SARS-CoV–2), which causes COVID–19, was first detected in December 2019 and has spread rapidly throughout the world. On March 13, 2020, the President declared a national emergency due to the COVID–19 outbreak, retroactive to March 1, 2020 (Proclamation 9994, 85 FR 15337). According to data from the Centers for Disease Control and Prevention (CDC), on August 24, 2020, there were 5,682,491 confirmed COVID–19 cases in the United States (176,223 confirmed deaths), with the number of cases rapidly expanding each day.[1] Medical experts from NIAID anticipated more cases in the United States and overseas beginning in February 2020.[2]

While stay-at-home orders and recommendations for social distancing have slowed the spread of COVID–19, there is currently no cure for COVID–19, nor are there vaccines capable of preventing transmission of the virus. Many potential COVID–19 treatments and vaccines are being tested in clinical trial settings designed to evaluate their safety and effectiveness. As of June 23, 2020, there were 27 clinical trials underway sponsored by NIAID.

A TRICARE COVID–19-related IFR published on May 12, 2020 (85 FR 27921), provided a temporary exception to the regulatory exclusion prohibiting audio-only telehealth services, temporarily eliminated copayments and cost-shares for TRICARE Prime and Select beneficiaries utilizing authorized telehealth services provided by network providers as a necessary incentive to prevent further spread of COVID–19, and temporarily authorized reimbursement of interstate practice by providers (both in-person and remotely) for care provided to TRICARE beneficiaries when such practice is permitted by federal or state law, even if the provider is not licensed in the state where practicing. That IFR was focused on temporary changes to the TRICARE program to aid in slowing community transmission of COVID–19. A second IFR, published on September 3, 2020 (85 FR 54914–54924), continued efforts by the ASD(HA) to implement temporary regulation changes in response to COVID–19 by focusing on temporary benefit and reimbursement changes that would support treatment of TRICARE beneficiaries. It also implemented two permanent regulation changes consistent with the statutory requirement that TRICARE reimburse like Medicare, to the extent practicable. This third COVID–19-related IFR builds on the efforts of the second IFR to provide beneficiaries access to emerging treatments (including vaccines) for COVID–19 by adding coverage for NIAID-sponsored COVID–19 clinical trials. This regulation implements an agreement entered into by the DoD with the National Institutes of Health (NIH) to cover such clinical trials, in accordance with statutory requirements.

Pursuant to the President's national emergency declaration regarding COVID–19 and as a result of the worldwide COVID–19 pandemic, the ASD(HA) hereby temporarily modifies the regulation to permit coverage of NIAID-sponsored COVID–19 phase I, II, III, and IV clinical trials. Details as follows:

a. 32 CFR 199.4(e)(26): Title 10, U.S.C. 1079(a)(12) authorizes, pursuant to an agreement with the Secretary of Health and Human Services (HHS) and under such regulations as the Secretary of Defense may prescribe, a waiver of the requirement that covered care be medically or psychologically necessary in connection with clinical trials sponsored by the NIH, provided the Secretary of Defense determines that such a waiver will promote access by covered beneficiaries to promising new treatments and contribute to the development of such treatments. On September 19, 2020, the DoD entered into an agreement with NIH to permit coverage of such trials.

Based on an agreement with the National Cancer Institute (NCI) and 32 CFR 199.4(e)(26), TRICARE currently covers NCI sponsored clinical trials related to cancer prevention, screening, and early detection. The intent of these statutory and regulatory provisions is to expand TRICARE beneficiary access to new treatments and to contribute to the development of such treatments.

This IFR will, pursuant to the agreement with the NIH, temporarily amend the regulation to authorize coverage of cost-sharing for medical care and testing of TRICARE-eligible patients who participate in Phase I, II, III, or IV clinical trials examining the treatment or prevention of COVID–19 that are sponsored by NIAID, enforcing the provisions within the agreement between DoD and NIH. Additionally, this change establishes requirements for TRICARE cost-sharing care related to NIAID-sponsored COVID–19 clinical trials; these new requirements mirror the existing requirements set forth in 32 CFR 199.4(e)(26)(ii)(B) for coverage of cancer clinical trials. This change supports statutory intent by encouraging participation of TRICARE beneficiaries in clinical trials studying the prevention or treatment of COVID–19 and contributing to the development of treatments, including vaccines, for COVID–19. This temporary modification will be effective for the duration of the President's national emergency regarding COVID–19; however, a patient who has been enrolled in an NIAID-sponsored clinical trial during the national emergency will continue to have his or her care cost-shared for the duration of that clinical trial, even if the national emergency has ended. Although this temporary provision is only effective for clinical trials for the treatment or prevention of COVID–19, and only for the duration of the national emergency, the DoD may consider expanding coverage to include other NIH clinical trials for the treatment of other diseases after evaluation of associated costs, benefits, risks, and other considerations; any such change would occur through future rulemaking. We invite comment on all benefit changes in this provision of the IFR, including comments on potential expansion of TRICARE's clinical trial benefit beyond cancer clinical trials and COVID–19 clinical trials.

b. Dates. This modification will become effective on October 30, 2020, and will cease to be in effect upon termination of the President's declared national emergency regarding COVID–19.

If the DoD determines it would be appropriate to continue coverage of COVID–19 clinical trials sponsored by NIAID or otherwise expand the clinical trial benefit beyond the duration of the national emergency, the DoD will issue a final rule to make permanent changes.

B. Interim Final Rule Justification

Agency rulemaking is governed by the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.* Section 553 of title 5, U.S.C., requires that, unless the rule falls within one of the enumerated exemptions, the DoD must publish a notice of proposed rulemaking in the **Federal Register** that provides interested persons an opportunity to submit written data, views, or arguments, prior to finalization of regulatory requirements. Section 553(b)(B) authorizes a department or agency to dispense with the prior notice and opportunity for public comment requirement when the agency, for ''good cause,'' finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public

[1] COVID–19 case information updated daily on the CDC website at *https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html.*

[2] *https://www.niaid.nih.gov/news-events/covid-19-reminder-challenge-emerging-infectious-diseases.*

interest. Section 553(d)(3) requires that an agency must include an explanation of such good cause with the publication of the new rule.

As noted in this preamble, the United States, as well as numerous other countries, has taken unprecedented measures to try to contain or slow the spread of COVID–19. Although studies of potential treatments of COVID–19 are in progress, these studies are expected to take time. Unfortunately, TRICARE beneficiaries who have contracted COVID–19 may not have time to wait for these treatments, given the rapidity with which the disease overtakes individuals who develop the most severe responses to the illness.

Given the national emergency caused by COVID–19, it would be impracticable and contrary to the public health—and, by extension, the public interest—to delay these implementing regulations until a full public notice-and-comment process is completed.

Therefore, pursuant to 5 U.S.C. 553(b)(B), and for the reasons stated in this preamble, the ASD(HA) concludes that there is good cause to dispense with prior public notice and the opportunity to comment on this rule before finalizing this rule. For the same reasons, the ASD(HA) has determined, consistent with section 5 U.S.C. 553(d), that there is good cause to make this IFR effective immediately upon publication in the **Federal Register**, with applicability of its provisions to coincide with the duration of the President's national emergency regarding the COVID–19 outbreak.

C. Summary of Major Provisions

This provision, 32 CFR 199.4(e)(26), temporarily waives the medical necessity requirements under 10 U.S.C. 1079(a)(12), as authorized by that statute, and establishes a clinical trial benefit for patients participating in NIAID-sponsored clinical trials for the prevention or treatment of COVID–19 during the President's national emergency regarding the COVID–19 outbreak. This provision also removes the reference to the NCI from the 32 CFR 199.4(e)(26) introductory text and authorizes coverage of clinical trials sponsored by any NIH Institute or Center, provided that the statutory requirements are also met (*i.e.,* the creation of an agreement with the Secretary of HHS and the creation of regulatory requirements implementing the agreement). This allows TRICARE coverage of clinical trials sponsored by the NIAID, one of the NIH Institutes and Centers responsible for sponsoring and approving clinical trials related to the treatment and prevention of COVID–19, among other diseases. In other words, this change temporarily removes the restriction that clinical trials under this paragraph be limited to NCI clinical trials.

The current regulatory language only includes waivers for NCI trials related to past or existing demonstrations, and it would be infeasible to create and implement a new COVID–19 demonstration due to the rapid spread of the pandemic, so this provision adds a third category of waiver for public health emergencies and specifically authorizes TRICARE coverage of beneficiary costs related to participation in NIAID-sponsored clinical trials for the treatment or prevention of COVID–19. This third category of waiver for public health emergencies is also a temporary provision; it merely provides an additional waiver type under which the NIAID clinical trials fall and criteria for that waiver type. This provision also establishes regulatory requirements for the coverage of NIAID-sponsored COVID–19 clinical trials to implement the agreement between DHA and NIH, as required by statute.

The DoD and NCI established a partnership in 1994 that allowed TRICARE beneficiaries to participate in cancer clinical trials for certain breast cancer treatments under a demonstration. The demonstration project expanded in 1996 to include all cancers and NCI-sponsored phase II and III cancer treatment clinical trials. The demonstration project partnership was ended by 71 FR 35390, which instead provided a continuous waiver of the medical necessity provision under 10 U.S.C. 1079(a)(12) when care was provided under NIH sponsored trials. That rule established the existing regulations under § 199.4(e)(26) for phase II and III cancer clinical trials. The DoD noted in the preamble for that rule that the demonstration had improved beneficiary access and resulted in contributions to the development of such treatments, justifying the formalization of the clinical trial benefit under TRICARE regulation. The regulation was modified again in 2011, with the addition of coverage for phase I cancer clinical trials (76 FR 2253).

Based on the success of the cancer clinical trial benefit and the urgent need for patients to have access to new treatments during the COVID–19 global pandemic, the ASD(HA) is temporarily waiving the medical necessity provision at 10 U.S.C. 1079(a)(12) for NIAID-sponsored clinical trials for the prevention or treatment of COVID–19 under a public health emergency waiver, as established in this regulation change, which implements the provisions of the agreement between DHA and NIH. TRICARE will cover cost-sharing for medical care and testing required for determining eligibility and participating in Phase I, Phase II, Phase III, and Phase IV clinical trials that meet the requirements set forth in this change. These requirements will implement the agreement between DHA and NIH and will be similar to the existing requirements for coverage of NCI cancer clinical trials, with the following differences: References to NCI and cancer will be changed to NIAID and COVID–19, respectively; Phase IV clinical trials will also be covered under the benefit; and there will be no prior authorization requirement for COVID–19 clinical trials, as the rapid progression of the disease necessitates a more rapid enrollment of beneficiaries and prior authorization would inhibit this enrollment. TRICARE will continue to deny coverage for care rendered in the NIH or costs associated with non-treatment research activities associated with the clinical trials, as well as for any items or services that are already covered under the investigational protocol, such as the drug and device being studied. For example, if the clinical trial were testing the efficacy of a COVID–19 vaccine, that vaccine would already be covered under the protocol (*i.e.,* neither TRICARE nor the patient would be liable for cost-sharing). Only those supplies and services that TRICARE otherwise would have covered during the normal course of treatment (including costs for screening tests to determine clinical trial eligibility) will be eligible for cost-sharing. This is consistent with the coverage policy which has been used for the cancer clinical trial benefit. Coverage will last for the duration of the President's national emergency regarding the COVID–19 outbreak, or, provided that the clinical trial begins and the beneficiary enrolls in the clinical trial before the termination of the national emergency, until the completion of the clinical trial, whichever occurs later. As required by 10 U.S.C. 1079(a)(12), DHA has entered into an agreement with NIH in order to cost-share eligible clinical trials; these regulatory provisions enforce this agreement.

Covering these trials will encourage participation by TRICARE beneficiaries in eligible clinical trials, contribute to the development of treatments and vaccines for COVID–19, and ensure that covered clinical trials meet similar requirements as those for NCI clinical trials for treatment of cancer. Due to the

rapid progression of the COVID–19 pandemic, the severity of the disease in many individuals, and the absence of any existing treatments or vaccines, participation in clinical trials may also be the safest and most successful method of providing TRICARE beneficiaries with early access to care for prevention or treatment of COVID–19. There are already multiple ongoing NIAID-sponsored COVID–19 trials for treatments and vaccines, and we expect many more to be developed. The requirements in this provision, as well as NIAID protocols and institutional review board requirements, will protect participant safety.

Any NIAID-sponsored Phase I, II, III, or IV trial with the purpose of: (1) Preventing infection with COVID–19; (2) diagnosing infection (current or past infection); (3) treating the infection; (4) treating the symptoms of infection (to include associated symptoms such as neurological impairment, cardiovascular illness, or other symptoms as they arise, both acute and long-term); or (5) alleviating pain or other conditions associated with the infection; may be covered under this regulatory provision. Trials that are solely for the purpose of public health research and which do not affect the medical management of the individual patient, such as randomized serological testing to determine prevalence or lasting immunity, may be covered only to the extent that the health plans of other, non-DoD participants are also billed for such care, consistent with TRICARE's regulation at 32 CFR 199.9 regarding appropriate billing practices. Further, care reimbursed under this regulatory provision applies to NIH extramural care, such as NIAID-sponsored trials occurring at partner universities. Care provided at NIH facilities (termed ''intramural'' care) is excluded.

This temporary provision, including the creation of a public health emergency waiver category, is only effective for the period beginning the date this rule publishes in the **Federal Register** through the end of President's national emergency regarding the COVID–19 outbreak. However, we may consider creating additional waivers to cover NIH-sponsored clinical trials in the future, including establishing permanent coverage of NIAID trials, if appropriate, after a review of the costs, benefits, risks, and other considerations. Such waivers would fall under the agreement between DHA and NIH that is being implemented in this provision and would require further rulemaking. We invite public comment on the NIAID COVID–19 clinical trial benefit as implemented in this IFR, as well as the potential expansion of the clinical trial benefit as part of a final rule to cover other NIH Institutes or Centers trials or clinical trials for other diseases.

D. Legal Authority for This Program

This rule is issued under 10 U.S.C. 1073(a)(2) giving authority and responsibility to the Secretary of Defense to administer the TRICARE program.

II. Regulatory History

Title 32 CFR 199.4 is revised every few years to ensure requirements continue to align with the evolving health care field. It was most recently permanently updated on September 29, 2017, with an IFR (82 FR 45438) that implemented the Congressionally-mandated TRICARE Select benefit plan. This revision to 32 CFR 199.4 included the addition of medically necessary foods as a benefit under the TRICARE Basic Program. Paragraph 199.4(e)(26) was last revised on January 13, 2011 (76 FR 2253), with the addition of coverage for NCI sponsored phase I clinical trials.

III. Regulatory Analysis

A. Regulatory Planning and Review

a. Executive Orders

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

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

Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs''

Executive Order 13771 requires that for every significant regulation promulgated, an agency must identify two for elimination and offset its costs. Executive Order 13771 seeks to control costs associated with the government imposition of private expenditures required to comply with Federal regulations and to reduce regulations that impose such costs. Consistent with the analysis of transfer payments under OMB Circular A–4, this interim final rule does not involve regulatory costs subject to Executive Order 13771.

b. Summary

The modifications to paragraph 199.4(e)(26) in this IFR will temporarily permit TRICARE coverage of cost-sharing for NIAID-sponsored clinical trials for the treatment or prevention of COVID–19 for the duration of the President's national emergency for the COVID–19 outbreak. The modifications will also implement the agreement between NIH and DHA by establishing requirements for coverage of Phase I, II, III, and IV clinical trials. TRICARE will cover cost-sharing for medical care and testing required for determining eligibility and participating in clinical trials that meet these requirements.

c. Affected Population

This change affects all TRICARE beneficiaries who wish to participate in NIAID-sponsored clinical trials for the treatment or prevention of COVID–19. TRICARE-authorized providers will be affected by being able to treat TRICARE beneficiaries in NIAID clinical trials. The participation of TRICARE beneficiaries in NIAID-sponsored trials positively affects the general public through the development of treatments and vaccines, although it may negatively affect some individuals who desire to participate in such trials but are unable to do so because they were displaced from participation by TRICARE beneficiaries. TRICARE's health care contractors will be affected by being required to implement the provisions of this regulatory change. State, local, and tribal governments will not be affected.

d. Costs

We estimate the total cost for TRICARE participation in NIAID-sponsored COVID–19 clinical trials will be $3.2M for the duration of the national emergency, with an additional $4.0M for continued care for beneficiaries enrolled in clinical trials prior to termination of the national emergency. There were several assumptions we made in developing this estimate. The duration of the COVID–19 national emergency is uncertain; however, for the purposes of this estimate, we assumed the national emergency would

expire on September 30, 2021 the end of fiscal year (FY) 2021, for ease of calculations. As of the drafting of this IFR, there were 27 NIAID-sponsored COVID–19 clinical trials begun since the start of the national emergency. We assumed 6.5 new trials every 30 days, for a total of 126 trials by September 2021, and that trials would last 17 months, on average, which is the average of the 27 NIAID-sponsored COVID–19 trials used in calculating this estimate. We assumed, based on average trial enrollment (1,770 participants per trial, on average) and that TRICARE beneficiaries would participate in trials at the same rate as the general population, that 4,549 TRICARE beneficiaries would participate through September 2021. Additionally, we assumed that costs for NIAID-sponsored trials will be similar to costs for NCI-sponsored trials, excluding chemotherapy, radiation, and surgery costs; the average government cost for NCI-sponsored trials less the excluded items was $93.00 per participant, per month in FY 2018 and FY 2019. Each of the assumptions in this estimate is highly uncertain, and our estimate could be higher or lower depending on real world events (more or fewer trials, a longer or shorter national emergency, and/or higher or lower participation in clinical trials by TRICARE beneficiaries).

e. Benefits

This change expands the therapies available to TRICARE beneficiaries in settings that ensure informed consent of the beneficiary, and where the benefits of treatment outweigh the potential risks. Participation in clinical trials may provide beneficiaries with benefits such as reduced hospitalizations and/or use of a mechanical ventilator. Although we cannot estimate the value of this avoidance quantitatively, the potential long-term consequences of serious COVID–19 illness, including permanent cardiac or lung damage, are not insignificant. Beneficiary access to emerging therapies that reduce these long-term consequences or even death can be considered to be high-value for those able to participate.

Providers will be positively affected by being able to provide their patients with a broader range of treatment options. The general public will benefit from an increased pool of available participants for the development of treatments and vaccines for COVID–19, as well as the evidence (favorable or otherwise) that results from this participation.

f. Alternatives

The DoD considered several alternatives to this IFR. The first alternative involved taking no action. Although this alternative would be the most cost neutral for DHA, it was rejected as not addressing the urgent medical needs of the beneficiary population in response to the COVID–19 pandemic.

The second alternative the DoD considered was implementing a more limited benefit change for COVID–19 patients by not covering phase I clinical trials. While this would have the benefit of reimbursing only care that has more established evidence in its favor, this alternative is not preferred because early access to treatments is critical for TRICARE beneficiaries given the rapid progression of the disease and the lack of available approved treatments.

B. Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601 et seq.)

The Secretary certifies that this IFR is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

C. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

D. Sec. 202, Public Law 104–4, ''Unfunded Mandates Reform Act of 1995''

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require spending by State, local, and tribal governments, in the aggregate, or by the private sector, in any one year of $100 million in 1995 dollars, updated annually for inflation. This IFR will not impose any Federal mandate for State, local, or tribal governments, nor will it affect private sector costs.

E. Public Law 96–511, ''Paperwork Reduction Act of 1995'' (44 U.S.C. Chapter 35)

32 CFR part 199 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

F. Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates an IFR (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This IFR will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 199

Administrative practice and procedure, Claims, Dental, Fraud, Health care, Health insurance, Individuals with disabilities, Mental health programs, and Military personnel.

Accordingly, 32 CFR part 199 is amended to read as follows:

PART 199—CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS)

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Amend § 199.4 by:
■ a. Revising the second sentence in paragraph (e)(26).
■ b. Adding new paragraph (e)(26)(iii).
The additions read as follows:

§ 199.4 Basic program benefits.

* * * * *

(e) * * *

(26) * * * By law, and pursuant to an agreement between the Department of Defense and the Department of Health and Human Services, the general prohibition against CHAMPUS cost-sharing of unproven drugs, devices, and medical treatments or procedures may be waived by the Secretary of Defense in connection with clinical trials sponsored or approved by the National Institutes of Health (NIH) or an NIH Institute or Center if it is determined that such a waiver will promote access by covered beneficiaries to promising new treatments and contribute to the development of such treatments. * * *

(iii) *Public Health Emergency Waiver.*

(A) *General.* During public health emergencies (*e.g.,* a national state of emergency declared by the President), TRICARE may cover cost-sharing for TRICARE-eligible patients who participate in Phase I, II, III, or IV trials that are sponsored by the NIH or an NIH Institute for the purposes of treatment or prevention of the pandemic or public health emergency.

(B) *National Institute of Allergy and Infectious Diseases (NIAID)-sponsored*

clinical trials for COVID–19. For the duration of the President's national emergency regarding the COVID–19 outbreak, TRICARE will cover cost-sharing for those TRICARE-eligible patients selected to participate in NIAID-sponsored Phase I, II, III, and IV studies examining the treatment or prevention of COVID–19 and its associated sequelae (*e.g.,* cardiac and pulmonary issues). TRICARE will continue to cover cost-sharing for any eligible beneficiary enrolled in such a study until the conclusion of that study, even if the national emergency ends before the conclusion of the study.

(*1*) TRICARE will cost-share all medical care (including associated health complications) and testing required to determine eligibility for an NIAID-sponsored trial, including the evaluation for eligibility at the institution conducting the NIAID-sponsored study. TRICARE will cost-share all medical care required as a result of participation in NIAID-sponsored studies. This includes purchasing and administering all approved pharmaceutical agents (except for NIAID-funded investigational drugs), all inpatient and outpatient care, including diagnostic, laboratory, rehabilitation, and home health services not otherwise reimbursed under an NIAID grant program if the following conditions are met:

(*i*) Such treatments are NIAID-sponsored Phase I, Phase II, Phase III, or Phase IV protocols;

(*ii*) The patient continues to meet entry criteria for said protocol;

(*iii*) The institutional and individual providers are TRICARE-authorized providers; and

(*iv*) The requirements for Phase I protocols in paragraph (e)(26)(iii)(B)(*2*) of this section are met.

(*2*) Requirements for Phase I protocols are:

(*i*) Standard treatment has been or would be ineffective, does not exist, or there is no superior non-investigational treatment alternative;

(*ii*) The available clinical or preclinical data provide a reasonable expectation that the treatment will be at least as effective as the non-investigational alternative;

(*iii*) The facility and personnel providing the treatment are capable of doing so by virtue of their experience, training, and volume of patients treated to maintain expertise; and

(*iv*) The referring physician has concluded that the enrollee's participation in such a trial would be appropriate based upon the satisfaction of paragraphs (e)(26)(iii)(B)(*2*)(*i*) through (*iii*) of this section.

(*3*) TRICARE will not provide reimbursement for care rendered in the NIH Clinical Center or costs associated with non-treatment research activities associated with the clinical trials.

(*4*) Cost-shares and deductibles applicable to TRICARE will also apply under the NIAID-sponsored clinical trials.

(*5*) The Director, Defense Health Agency (or designee), shall issue procedures and guidelines establishing NIAID-sponsorship of clinical trials and the administrative process by which individual patients apply for and receive cost-sharing under NIAID-sponsored COVID–19 clinical trials.

* * * * *

Dated: October 27, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–24114 Filed 10–28–20; 11:15 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2019–0302, EPA–R05–OAR–2019–0676; FRL–10015–49–Region 5]

Air Plan Approval; Ohio; Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving under the Clean Air Act, a State Implementation Plan (SIP) submittal from the Ohio Environmental Protection Agency (OEPA). This SIP revision request, submitted on April 5, 2019, and supplemented on November 21, 2019, consists of amendments and additions to the volatile organic compound (VOC) rules in the Ohio Administrative Code (OAC). These changes provide clarity to facilities that are subject to multiple VOC requirements in the SIP, or whose applicable requirements have been moved to other sections within the OAC as a result of a previous revision. The changes also correct errors and provide general administrative cleanup. An alternative monitoring, recordkeeping, and reporting program was added to the requirements for the BP-Husky Refining LLC, Toledo Refinery. In addition, the SIP submittal adds a mechanism for Ohio to approve alternate limitations for site-specific miscellaneous industrial adhesive and sealant facilities and includes alternate site-specific limitations for certain process lines at the Accel Group, Incorporated (Accel) facility in Wadsworth, Ohio. EPA proposed to approve this action on July 22, 2020, and received no adverse comments.

DATES: This final rule is effective on November 30, 2020.

ADDRESSES: EPA has established dockets for this action under Docket ID Nos. EPA–R05–OAR–2019–0302 (pertaining to amendments to OAC Chapter 3745–21) and EPA–R05–OAR–2019–0676 (pertaining to site-specific alternate VOC SIP limits for the Accel facility). All documents in the dockets are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone Anthony Maietta, Environmental Protection Specialist, at (312) 353–8777 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Environmental Protection Specialist, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8777, *maietta.anthony@epa.gov.*

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

I. Background Information

On July 22, 2020, EPA proposed to approve amendments and additions to the VOC rules located at OAC Chapter 3745–21, including an alternative monitoring, recordkeeping, and reporting program for the BP-Husky Refining LLC, Toledo Refinery at OAC 3745–21–09(T)(4), and alternate site-specific limitations for the Accel facility contained in its September 19, 2019, operating permit (85 FR 44255). An explanation of the applicable Clean Air Act requirements, a detailed analysis of the revisions, and EPA's reasons for

proposing approval were provided in the notice of proposed rulemaking (NPRM) and will not be restated here. The public comment period for this proposed rule ended on August 21, 2020. EPA received one supportive comment (from BP-Husky) on the proposal. Therefore, we are finalizing our action as proposed.

II. Final Action

EPA is approving the revisions to OAC Chapter 3745–21, specifically to the following rules: 3745–21–09, 3745–21–10, 3745–21–25, 3745–21–26, 3745–21–28, and 3745–21–29, as contained in Ohio's April 5, 2019 submittal. EPA is also approving into the SIP the addition of paragraphs B.4, B.6, B.8, B.9.c), C.1.b)(1)d, C.1.b)(2)a, C.1.d)(2), C.1.d)(3), C.1.e)(3), C.1.f)(1)c, C.2.b)(1)d, C.2.b)(2)a, C.2.d)(2), C.2.d)(3), C.2.e)(3), and C.2.f)(1)e as listed in the September 19, 2019 operating permit for the Accel facility.

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Ohio Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov,* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by 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 rulemaking of 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, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant regulatory action under Executive Order 12866;
- 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 Clean Air Act; 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).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 29, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 8, 2020.

Kurt Thiede,

Regional Administrator, Region 5.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.1870 amend:

■ a. The table in paragraph (c) under ''Chapter 3745–21 Carbon Monoxide, Ozone, Hydrocarbon Air Quality Standards, and Related Emissions Requirements'' by revising the entries for 3745–21–09, 3745–21–10, 3745–21–25, 3745–21–26, 3745–21–28, and 3745–21–29; and

■ b. The table in paragraph (d) by adding a new entry for ''Accel Group, Inc.'' before the entry for ''AK Steel Corporation''.

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

The revisions and addition read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED OHIO REGULATIONS

Ohio citation	Title/subject	Ohio effective date	EPA approval date	Notes
*	*	*	*	*
Chapter 3745–21	**Carbon Monoxide, Ozone, Hydrocarbon Air Quality Standards, and Related Emission Requirements**			
*	*	*	*	*
3745–21–09	Control of emissions of volatile organic compounds from stationary sources and perchloroethylene from dry cleaning facilities.	2/16/2019	10/30/2020, [INSERT **Federal Register** CITATION].	
3745–21–10	Compliance test methods and procedures	2/16/2019	10/30/2020, [INSERT **Federal Register** CITATION].	
*	*	*	*	*
3745–21–25	Control of VOC emissions from reinforced plastic composites production operations.	2/16/2019	10/30/2020, [INSERT **Federal Register** CITATION].	
3745–21–26	Surface coating of miscellaneous metal and plastic parts	2/16/2019	10/30/2020, [INSERT **Federal Register** CITATION].	
*	*	*	*	*
3745–21–28	Miscellaneous industrial adhesives and sealants	2/16/2019	10/30/2020, [INSERT **Federal Register** CITATION].	
3745–21–29	Control of volatile organic compound emissions from automobile and light-duty truck assembly coating operations, and cleaning operations associated with these coating operations.	2/16/2019	10/30/2020, [INSERT **Federal Register** CITATION].	
*	*	*	*	*

* * * * *

(d) * * *

EPA-APPROVED OHIO SOURCE-SPECIFIC PROVISIONS

Name of source	Number	Ohio effective date	EPA approval date	Comments
Accel Group, Inc	P0120345	9/16/2019	10/30/2020, [INSERT **Federal Register** CITATION].	Only paragraphs B.4, B.6, B.8, B.9.c), C.1.b)(1)d, C.1.b)(2)a, C.1.d)(2), C.1.d)(3), C.1.e)(3), C.1.f)(1)c, C.2.b)(1)d, C.2.b)(2)a, C.2.d)(2), C.2.d)(3), C.2.e)(3), and C.2.f)(1)e.
*	*	*	*	*

* * * * *

[FR Doc. 2020–22785 Filed 10–29–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 170

[EPA–HQ–OPP–2017–0543; FRL–10016–03]

RIN 2070–AK49

Pesticides; Agricultural Worker Protection Standard; Revision of the Application Exclusion Zone Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing revisions to the Agricultural Worker Protection Standard (WPS) to clarify and simplify the application exclusion zone (AEZ) requirements. This rulemaking is responsive to feedback received from stakeholders and the Agency's efforts to reduce regulatory burden, while providing the necessary protections for agricultural workers and the public. EPA remains committed to ensuring the protection of workers and persons in areas where pesticide applications are taking place. The AEZ and no contact provisions aim to ensure such protections. EPA also has a strong interest in promulgating regulations that are enforceable, clear, and effective.

DATES: This final rule is effective December 29, 2020.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2017–0543, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Carolyn Schroeder, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (703) 308–2961; email address: *OPP_NPRM_AgWorkerProtection@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you work in or employ persons working in crop production agriculture where pesticides are applied. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Agricultural Establishments (NAICS code 111000).
- Nursery and Tree Production (NAICS code 111421).
- Timber Tract Operations (NAICS code 113110).
- Forest Nurseries and Gathering of Forest Products (NAICS code 113210).
- Farm Workers (NAICS codes 11511, 115112, and 115114).
- Pesticide Handling on Farms (NAICS code 115112).
- Farm Labor Contractors and Crew Leaders (NAICS code 115115).
- Pesticide Handling in Forestry (NAICS code 115310).
- Pesticide Manufacturers (NAICS code 325320).
- Farm Worker Support Organizations (NAICS codes 813311, 813312, and 813319).
- Farm Worker Labor Organizations (NAICS code 813930).
- Crop Advisors (NAICS codes 115112, 541690, 541712).

If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the Agency's authority for taking this action?

This action is issued under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136–136y, particularly sections 136a(d), 136i, and 136w. Additionally, in accordance with the Pesticide Registration Improvement Extension Act of 2018 (PRIA 4) (Pub. L. 116–8; March 8, 2019), EPA is only revising the AEZ requirements in the WPS.

C. What action is the Agency taking?

EPA is revising the AEZ requirements of the WPS (40 CFR part 170) adopted in 2015 (80 FR 67496, November 2, 2015) (FRL–9931–81) (Ref. 1) to clarify and simplify the requirements. Specifically, EPA is amending the AEZ requirements by:

- Modifying the AEZ so it is applicable and enforceable only on an agricultural employer's property, as proposed.
- Adding clarifying language indicating that pesticide applications which have been suspended due to individuals entering an AEZ on the establishment may be resumed after those individuals have left the AEZ.
- Excepting agricultural employers and handlers from the requirement to suspend applications owing to the presence within the AEZ of persons not employed by the establishment who are in an area subject to an easement that prevents the agricultural employer from temporarily excluding those persons from that area.
- Allowing the owners and their immediate family (as defined in 40 CFR 170.305) to shelter in place inside closed buildings, housing, or shelters within the AEZ, and allowing the application performed by handlers to proceed provided that the owner has instructed the handlers that only the owner's immediate family are inside the closed shelter and that the application should proceed despite their presence.
- Simplifying and clarifying criteria and factors for determining AEZ distances of either 100 or 25 feet by basing the AEZ on application method. EPA has removed the language and criteria pertaining to spray quality and droplet size, as proposed, so that all ground spray applications from a height greater than 12 inches are subject to the same 25-foot AEZ.

As discussed further in this document, these revisions take into consideration the comments received from the public in response to the AEZ proposed rule (84 FR 58666, November 1, 2019) (FRL–9995–47) (Ref. 2).

D. Why is the Agency taking this action?

As further described in Unit II.B. of the proposed rule (Ref. 2), EPA initiated this rulemaking to clarify and simplify the WPS AEZ requirements in response to feedback about the AEZ requirements in the 2015 WPS rule from members of the agricultural community, including the U.S. Department of Agriculture (USDA), state pesticide regulatory agencies (*i.e.,* State Lead Agencies (SLAs)) and organizations, and several agricultural interest groups, as well as discussions with the Pesticide Program Dialogue Committee (PPDC) and public comments. This rulemaking is also responsive to the Agency's efforts to reduce burden on regulated entities, while providing the necessary protections for agricultural workers and the public. EPA remains committed to ensuring the protection of workers and persons in areas where pesticide applications are taking place. The AEZ and no contact provisions aim to ensure such protections. EPA also has a strong interest in promulgating regulations that are enforceable, clear, and effective.

E. What are the estimated incremental impacts of this action?

EPA evaluated the potential incremental economic impacts and determined that these changes reduce existing burden. This analysis (Ref. 3), which is available in the docket, is summarized here.

The primary benefit of revising the AEZ requirements is a reduction in the complexity of applying a pesticide and improving the compliance and enforceability of the requirements. This deregulatory action is expected to reduce the burden for affected entities because the revised requirements are expected to substantially reduce the complexity of arranging and conducting a pesticide application. EPA has not, however, quantified the anticipated cost savings.

II. Context and Goals of This Rulemaking

A. Context for This Rulemaking

1. *Statutory authority.* Enacted in 1947, FIFRA established a framework for the pre-market registration and regulation of pesticide products; since 1972, FIFRA has prohibited the registration of pesticide products that cause unreasonable adverse effects. FIFRA makes it unlawful to use a pesticide in a manner inconsistent with the labeling and gives EPA's Administrator authority to develop regulations to carry out the Act. FIFRA's legislative history indicates that Congress specifically intended for FIFRA to protect workers and other persons from occupational exposure directly to pesticides or to their residues (Ref. 4).

Under FIFRA's authority, EPA has implemented measures to protect workers, handlers, other persons, and the environment from pesticide exposure in two primary ways. First, EPA includes product-specific use instructions and restrictions on individual pesticide product labeling. These instructions and restrictions are the result of EPA's stringent registration and reevaluation processes and are based on the risks of the particular product. Since users must comply with directions for use and restrictions on a product's labeling, EPA uses the labeling to convey mandatory requirements for how the pesticide must be used to protect people and the environment from unreasonable adverse effects of pesticide exposure. Second, EPA enacted the WPS to expand protections against the risks of agricultural pesticides without making individual product labeling longer and much more complex. The WPS is a uniform set of requirements for workers, handlers, and their employers that are generally applicable to all agricultural pesticides and are incorporated onto agricultural pesticide labels by reference. Its requirements complement the product-specific labeling restrictions and are intended to minimize occupational exposures generally.

2. *EPA's regulation of pesticides.* EPA uses a science-based approach to register and re-evaluate pesticides in order to protect human health and the environment from unreasonable adverse effects that might be caused by pesticides. The registration process begins when a manufacturer submits an application to register a pesticide. The application must contain required test data, including information on the pesticide's chemistry, environmental fate, toxicity to humans and wildlife, and potential for human exposure. EPA also requires a copy of the proposed labeling, including directions for use and appropriate warnings.

Once an application for a new pesticide product is received, EPA conducts an evaluation, which includes a detailed review of scientific data to determine the potential impact on human health and the environment. EPA considers the risk assessments and results of any peer review and evaluates potential risk management measures that could mitigate risks that exceed EPA's level of concern. In the registration process, EPA evaluates the proposed use(s) of the pesticide to determine whether it would cause adverse effects on human health, non-target species, and the environment. In evaluating the impact of a pesticide on occupational health and safety, EPA considers the risks associated with use of the pesticide (occupational, environmental) and the benefits associated with use of the pesticide (economic, public health, environmental). However, FIFRA does not require EPA to balance the risks and benefits for each exposed group individually. For example, a product may pose risks to workers, but those risks may nevertheless be reasonable in comparison to the economic benefit of continued use of the product to society at large.

If the application for registration does not contain sufficient evidence for EPA to determine that the pesticide meets the FIFRA registration criteria, EPA communicates to the applicant the need for more or better refined data, labeling modifications, or additional use restrictions. Once the applicant has demonstrated that a proposed product meets the FIFRA registration criteria and any applicable requirements under the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 321 *et seq.,* EPA approves the registration subject to any risk mitigation measures necessary to meet the FIFRA registration criteria. EPA devotes significant resources to the regulation of pesticides to ensure that each pesticide product meets the FIFRA requirement that pesticides not cause unreasonable adverse effects to the public and the environment.

When EPA approves a pesticide, the labeling generally includes all risk mitigation measures required by EPA for the particular pesticide product and the uses specified on its label. The risk mitigation measures may include requiring certain engineering controls, such as the use of closed systems for mixing pesticides and loading them into application equipment to reduce potential exposure to those who handle pesticides; establishing conditions on the use of the pesticide by specifying certain use sites, maximum application rate or maximum number of applications; or establishing restricted entry intervals (REIs) during which entry into an area treated with the pesticide is generally prohibited until residue levels have declined to levels unlikely to cause unreasonable adverse effects. Because users must comply with the directions for use and use restrictions on a product's labeling, EPA uses the labeling to establish and convey mandatory requirements for how the pesticide must be used to protect the applicator, the public, and the environment from pesticide exposure.

Under FIFRA, EPA is required to review periodically the registration of pesticides currently registered in the United States. The 1988 FIFRA amendments required EPA to establish a pesticide reregistration program. Reregistration was a one-time comprehensive review of the human health and environmental effects of pesticides first registered before November 1, 1984 to ensure that these pesticides' registrations were consistent with contemporary standards. The 1996 amendments to FIFRA required that EPA establish, through rulemaking, an ongoing ''registration review'' process of all pesticides at least every 15 years. The final rule establishing the registration review program was signed in August 2006 (71 FR 45720, August 9, 2006) (FRL–8080–4), and is promulgated in 40 CFR part 155. The purpose of both re-evaluation programs is to review all pesticides registered in the United States to ensure that they continue to meet current safety standards based on up-to-date scientific approaches and relevant data.

Pesticides reviewed under the reregistration program that met current scientific and safety standards were declared ''eligible'' for reregistration. The results of EPA's reviews are summarized in Reregistration Eligibility Decision (RED) documents. Often before a pesticide could be determined ''eligible,'' additional risk reduction measures had to be put in place. For a number of pesticides, measures intended to reduce exposure to handlers and workers were needed and are now reflected on pesticide labeling. To address occupational risk concerns, REDs include mitigation measures such as: Voluntary cancellation of the product or specific use(s); limiting the amount, frequency, or timing of applications; imposing other application restrictions; classifying a product or specific use(s) for restricted use only by certified applicators; requiring the use

of specific personal protective equipment (PPE); establishing specific REIs; and improving use directions. During this process, EPA also encouraged registrants to find replacements for the inert ingredients of greatest concern. As a result of EPA's reregistration efforts, current U.S. farm workers are not exposed to many of the previously used active and inert ingredients that were of the greatest toxicological concern. And for most of the older products that remain registered, reregistration resulted in the inclusion of additional risk mitigation measures on the label.

EPA's registration review program is a recurring assessment of products against current standards. EPA reviews each registered pesticide at least every 15 years to determine whether it continues to meet the FIFRA standard for registration. Pesticides registered before 1984 were reevaluated initially under the reregistration program. These and pesticides initially registered in 1984 or later are all subject to registration review.

In summary, EPA's pesticide reregistration and registration reviews assess the specific risks associated with particular chemicals and ensure that the public and environment do not suffer unreasonable adverse effects from those risks. EPA implements the risk reduction and mitigation measures identified in the pesticide reregistration and registration review programs through amendments to individual pesticide product labeling.

3. *The Agricultural Worker Protection Standard (WPS).* The Agricultural WPS regulation in 40 CFR part 170 is incorporated on certain pesticide product labeling through a statement in the agricultural use box. The WPS provides a comprehensive collection of pesticide management practices generally applicable to all agricultural pesticide use scenarios in crop production, complementing the product-specific requirements that appear on individual pesticide product labels.

The risk reduction measures of the WPS may be characterized as being one of three types: Information, protection, and mitigation. To ensure that employees will be informed about exposure to pesticides, the WPS requires that workers and handlers receive training on general pesticide safety, and that employers provide access to information about the pesticides with which workers and handlers may have contact. To protect workers and handlers from pesticide exposure, the WPS prohibits the application of pesticides in a manner that exposes workers or other persons, generally prohibits workers and other persons from being in areas being treated with pesticides, and generally prohibits workers from entering a treated area while an REI is in effect (with limited exceptions that require additional protections). In addition, the rule protects workers by requiring employers to notify them about areas on the establishment treated with pesticides through posted and/or oral warnings. The rule protects handlers by ensuring that they understand proper use of and have access to required PPE. Finally, the WPS has provisions to mitigate exposures if they do occur by requiring the employer to provide to workers and handlers with an ample supply of water, soap, and towels for routine washing and emergency decontamination. The employer must also make transportation available to a medical care facility if a worker or handler may have been poisoned or injured by a pesticide and provide health care providers with information about the pesticide(s) to which the person may have been exposed.

EPA manages the risks and benefits of each pesticide product primarily through the labeling requirements specific to each pesticide product. If pesticide products are used according to the labeling, EPA does not expect use to cause unreasonable adverse effects. However, data on incidents of adverse effects to human health and the environment from the use of agricultural pesticides show that users do not always comply with labeling requirements. Rigorous ongoing training, compliance assistance, and enforcement are needed to ensure that risk mitigation measures are appropriately implemented in the field. The framework provided by the WPS is critical for ensuring that the improvements brought about by reregistration and registration review are realized in the field. For example, the requirement for handlers to receive instruction on how to use the pesticide and the application equipment for each application is one way to educate handlers about updated requirements on product labeling to ensure they use pesticides in a manner that will not harm themselves, workers, the public, or the environment. In addition, REIs are established through individual pesticide product labeling, but action needs to be taken at the use site to ensure that workers are aware of areas on the establishment where REIs are in effect and given directions to be kept out of the treated area while the REI is in effect. The WPS has been designed to enhance the effectiveness of the existing structure of protections and to better realize labeling-based risk mitigation measures at the field level.

B. Goals of This Rulemaking

1. *Background and intent of the AEZ requirements.* In 2015, EPA finalized revisions to the WPS for the first time since 1992 (Ref. 1). As established in the 1992 WPS rule (57 FR 38101, August 21, 1992) (FRL–3374–6), the pesticide handler's employer and the pesticide handler are required to ensure that no pesticide is applied so as to contact, either directly or through drift, any agricultural worker or other person, other than appropriately trained and equipped pesticide handlers involved in the application. This requirement is commonly referred to as the ''Do Not Contact'' provision and has been one of the key protective and enforcement mechanisms on both pesticide labels and in the WPS. This requirement prohibits application in a way that contacts agricultural workers or other persons both on and off the agricultural establishment where the pesticide is being applied.

The 2015 WPS rule (Ref. 1) added requirements to supplement the existing requirements and to enhance compliance with safe application practices designed to protect agricultural workers and bystanders from pesticide exposure through drift. The 2015 WPS rule established the AEZ requirements for outdoor production, defined as ''the area surrounding the application equipment that must be free of all persons other than appropriately trained and equipped handlers during pesticide applications.'' The AEZ moves with the application equipment and is no longer in effect once the pesticide application stops. For aerial, air blast, and ground applications with fine or very fine droplet size, as well as fumigations, mists, and foggers, the area encompasses 100 feet from the application equipment in all directions. For ground applications with medium or larger droplet size and a spray height of more than 12 inches from the ground, the area encompasses 25 feet from the application equipment in all directions. For all other applications, there is no AEZ.

The 1992 WPS rule prohibited agricultural employers from allowing or directing any agricultural worker or other person other than trained and properly equipped pesticide handlers involved in the application to enter or remain in the treated area until after the pesticide application is complete. The 2015 WPS rule further prohibited the employer from allowing anyone in the

part of the AEZ (which can extend beyond the treated area) that is within the boundaries of the establishment. For example, employers and handlers must ensure that workers in adjacent fields or buildings within their establishment move out of an AEZ as the pesticide application equipment passes; workers could return once the equipment has moved on (provided no REI is in effect in that area; the treated area does not map to the AEZ). The 2015 WPS rule also required handlers to ''immediately suspend a pesticide application'' if anyone other than a trained and properly equipped handler is within the AEZ, including any part of the AEZ beyond the boundaries of the agricultural establishment.

These restrictions were intended to reduce incidents, or the probability of incidents, in which people in areas adjacent to pesticide applications could be affected by drift. Additionally, the purpose of the AEZ was to supplement and establish written controls to guide employers and handlers on how to comply with the primary prohibition against applying pesticides in a manner that results in contact to others by establishing a well-defined area from which persons generally must be excluded during applications. The AEZ requirement was just one of the many worker and public health protection tools incorporated into the 2015 WPS rule to emphasize one of the key safety points in the WPS and on pesticide labels in general—do not spray people.

2. *Stakeholder engagement after the 2015 WPS rule.* Shortly after the publication of the 2015 WPS rule and during the Agency's extensive outreach and training efforts for State Lead Agencies (SLAs) after promulgating the rule, some SLAs and organizations that represent SLAs began raising concerns about the AEZ requirements (Ref. 5). Frequent comments about the AEZ included concerns about its complexity and enforceability. In an effort to address questions and concerns raised by SLAs early on during the initial outreach and training efforts, EPA issued an AEZ-specific guidance in April 2016 (Ref. 6). Despite this guidance, EPA continued to hear from key stakeholder groups, including those representing SLAs such as the Association of American Pesticide Control Officials (AAPCO) (Ref. 7) and the National Association of State Departments of Agriculture (NASDA) (Ref. 8), regarding their concerns around the AEZ requirements.

In accordance with Executive Order 13777, *Enforcing the Regulatory Reform Agenda* (82 FR 12285, March 1, 2017), and based on the feedback received up to that point, EPA solicited additional public comments on the AEZ and other provisions of the WPS in the spring of 2017 on regulations that may be appropriate for repeal, replacement, or modification as part of the Agency's Regulatory Reform Agenda efforts. EPA encouraged entities significantly affected by Federal regulations, including state, local, and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations, to provide input and other assistance, as permitted by law. EPA received comments from stakeholders on the WPS regulations, as amended in 2015, as part of the public's response to the Executive Order 13777 request.

These revisions are also in the spirit of Executive Order 13790, *Promoting Agriculture and Rural Prosperity in America* (82 FR 20237, April 25, 2017), the intent of which was to help ensure that regulatory burdens do not unnecessarily encumber agricultural production or harm rural communities. The Executive Order required USDA to assemble an interagency taskforce, including EPA, to identify legislative, regulatory, and policy changes to promote in rural America agriculture, economic development, job growth, infrastructure improvements, technological innovation, energy security, and quality of life.

Information pertaining specifically to EPA's evaluation of existing regulations under Executive Order 13777, including the comments received, can be found at *https://www.regulations.gov* under docket ID number EPA–HQ–OA–2017–0190. Among the comments received, approximately 25 commenters provided input specific to the AEZ requirements in the 2015 WPS rule. Commenters on the AEZ requirements included SLAs, state organizations/associations, an agricultural coalition, farm bureau federations, grower and trade organizations, and a retailer organization (Ref. 9). Commenters discussed the need for changes to several WPS requirements, including the AEZ. Comments on the AEZ from organizations representing SLAs and agricultural interests raised concerns about the states' ability to enforce the AEZ requirements, expressed a need for clarity about how the requirement was intended to work, described problems with worker housing near treated areas, and the perception of increased burden on the regulated community. As noted in several of the SLA comments, including those submitted by AAPCO, EPA's efforts to address some of the concerns raised since 2015 through guidance have not been adequate. Commenters also indicated that EPA did not provide the necessary clarity to assist state regulatory agencies with compliance and enforcement activities.

In addition to comments received through the Regulatory Reform Agenda process, EPA solicited feedback on the WPS and AEZ requirements from the Pesticide Program Dialogue Committee (PPDC). The PPDC is a federal advisory committee that includes a diverse group of stakeholders from environmental and public interest groups, pesticide manufacturers, trade associations, commodity groups, public health and academic institutions, federal and state agencies, and the general public. In May 2017, the PPDC discussed the implementation of the WPS in general as part of the ongoing Executive Order 13777 efforts (Ref. 10). On November 2, 2017, PPDC members again discussed the WPS requirements for the application exclusion zone in a public meeting with EPA (Ref. 11). Feedback EPA received on the AEZ revolved around the need to develop additional training and enhanced guidance for certain scenarios to ensure the success of the provision. With this feedback in mind, EPA addressed the remaining AEZ issues with a second guidance document, issued in February 2018 (Ref. 12). Despite this additional guidance, feedback from SLAs indicated that this guidance was still unable to adequately address the issues identified during the Regulatory Reform process and the Agency's outreach efforts.

Requests from SLAs to clarify and simplify WPS AEZ requirements, together with comments received through 2018 from various stakeholders regarding the need for improved clarity and guidance on the AEZ requirements, and the Agency's inability to effectively address all AEZ issues through guidance, prompted EPA's decision to address these issues through rulemaking.

III. Proposed Changes to the AEZ Requirements

On November 1, 2019 (Ref. 2), EPA proposed narrow updates to the WPS regulation to improve the long-term success of the Agency's AEZ requirements. Specifically, EPA proposed to:

- Modify the AEZ so it is applicable and enforceable only on an agricultural employer's property, where an agricultural employer can lawfully exercise control over employees and bystanders who could fall within the AEZ. As currently written, the off-farm aspect of this provision has proven difficult for state regulators to enforce. These proposed changes would enhance

both enforcement and implementation of the AEZ for state regulators and agricultural employers respectively. Off-farm bystanders would still be protected from pesticide applications by the existing ''do not contact'' requirement that prohibits use in a manner that would contact unprotected individuals.

- Add clarifying language indicating that pesticide applications which have been suspended due to individuals entering an AEZ may be resumed after those individuals have left the AEZ.
- Simplify the criteria for deciding whether pesticide applications are subject to the 25- or 100-foot AEZ.
- Exempt the owners of certain family-owned farms from the AEZ requirements in regard to immediate family members who remain inside closed buildings, housing, or shelters on the establishment. This would allow farm owners and their immediate family members to stay in their homes or other enclosed structures on their property during certain pesticide applications.

EPA proposed these targeted updates to improve enforceability for state regulators and reduce regulatory burdens for farmers while maintaining public health protections for farm workers and other individuals near agricultural establishments that could be exposed to agricultural pesticide applications.

IV. Public Comments

The public comment period for the proposed rule closed on January 30, 2020. EPA received 126 unique submissions to the docket, of which three were mass mail/signature campaigns that included over 28,000 written comments and/or signatures. Commenters included state pesticide regulatory agencies and associations, farmworker advocacy organizations, public health associations and professionals, growers and grower organizations, agricultural producer organizations, applicators and applicator organizations, farm bureaus, concerned citizens, and others. Comments and EPA's responses to these comments, including those that do not raise significant issues or substantially change the proposed requirements, are in a Response to Comments document (Ref. 13) that is available in the docket for this action. Those comments that have prompted changes to the proposed requirements for the final rule are discussed in Unit V, which describes the comments and the final requirements. In this unit, EPA is providing a summary of the substantive issues raised by comments and EPA's responses, which are discussed in detail in the Response to Comment document (Ref. 13).

A. Support for the Rulemaking

1. *Comments.* Of the 126 unique submissions to the docket, approximately 16 commenters submitted comments in support of EPA's efforts to clarify and simplify the AEZ requirements of the WPS, noting that these changes would result in improved enforceability and compliance while maintaining other protections intended to ensure the safety of workers or other persons from contact during pesticide applications. In addition to general support, 10 of these commenters provided additional recommendations to further improve upon the proposed changes.

2. *EPA Response.* EPA appreciates the commenters' general support for the proposed revisions. EPA acknowledges that several commenters provided additional feedback or recommendations on ways to improve the AEZ provision, which will be discussed in more detail in the following sections of this document and in the Response to Comments document (Ref. 13).

B. Opposition to the Rulemaking

1. *Comments.* Most of the comments submitted to the docket expressed opposition to EPA finalizing the proposed changes. Of the 126 unique submissions to the docket, EPA received 110 unique submissions in opposition to the proposed rule changes. This includes 3 mass mail/signature campaigns with 28,202 signatures or general comments of opposition and 89 individual comments submitted to the docket. Some of these comments speak to personal experiences with pesticide exposures, while others asked EPA in general to protect human health and the environment by maintaining the AEZ requirements. Other commenters stated that EPA should not allow humans to be sprayed, and that all people should receive adequate protections both on and off the establishment. In addition to the general comments received in opposition to the proposed rule, EPA received approximately 18 comments with more specific recommendations and concerns on the proposed rule, including feedback on EPA's analyses and rationale for the proposed changes.

2. *EPA Response.* EPA appreciates the many commenters who provided personal stories about experiences with pesticide exposures. These and many other experiences are some of the reasons EPA implements and supports the WPS requirements and makes every effort to ensure workers and bystanders are protected from pesticide risks.

EPA generally agrees with the commenters regarding protecting workers and bystanders from exposure during pesticide applications and believes that many of the comments result from deficiencies in the proposed rule's explanation of the proposed changes. Many of the commenters thought that by limiting the AEZ requirements to within the boundaries of the establishment where owners have the ability to control the movement of people, thereby excepting individuals off the establishment or on easements, and by exempting agricultural establishment owners and their immediate families from leaving their homes that are within the AEZ boundaries, EPA was permitting handlers to spray pesticides in a manner that would result in people being contacted by pesticides and being unnecessarily exposed. This is a misunderstanding of the proposed rule, which retained protections sufficient to protect workers, bystanders, and family members.

Consistent with both agricultural pesticide labels and the WPS since 1994, the handler employer and the handler must ensure that no pesticide is applied so as to contact, directly or through drift, any worker or other person, other than appropriately trained and equipped handlers involved in the application. This is a long-standing requirement, often referred to as the ''Do Not Contact'' provision, that was in place before (and after) EPA finalized its updates to the 2015 rule that introduced the concept of the AEZ. The AEZ, when considered by the agency, was initially framed as a set of guiding practices to support the ''Do Not Contact'' provision. Although EPA proposed that the AEZ would no longer apply to areas outside of the agricultural establishment's boundaries or to those outside of the agricultural employer's control (*e.g.,* those who are working on or in easements), EPA did not propose any change to the requirement that handlers must ensure that their application does not contact persons directly or through drift. If a handler has any reason to believe that workers or bystanders may be contacted by a pesticide during a pesticide application, the application should not take place until either those individuals leave the area or the handler can take measures to ensure that contact will not occur. Otherwise, the handler risks causing harm to others and violating the WPS and pesticide label.

EPA acknowledges it is critical to educate handlers and others on how to prevent pesticide exposure from

occurring. The AEZ guidance documents issued by EPA since 2016 state that applications near establishment borders can continue provided that the applicator or handler follows certain measures or steps to ensure that applications will not result in individuals being contacted by spray or through drift off the establishment. As noted in these guidelines, this same information is incorporated into required WPS handler training programs (see 40 CFR 170.501 for handler training requirements) approved by EPA since June 2018. Most of these approved handler trainings are available through one of EPA's cooperative agreements at *http://www.pesticideresources.org/wps/training/handlers.html.* EPA-approved training programs will continue to provide this valuable information (including training related to the AEZ) to handlers regarding how to the comply with the ''Do Not Contact'' provision. EPA is open to working with the various stakeholder groups on other training or supplemental educational materials for handlers. Ultimately, EPA and stakeholders have a shared interest in providing handlers with information and tools needed to prevent pesticides contacting anyone on or off the establishment.

C. EPA's Administrative Record and Justifications for the AEZ Changes

1. *Comments.* Several commenters, including some advocacy groups, individuals within the public health field, and a joint letter signed by seven State Attorneys General (AG) offices, expressed opposition and concern regarding EPA's justification of the proposed AEZ changes. The commenters argued that EPA's proposal reflected an unsupported change in the position EPA took when promulgating the 2015 Rule. These commenters argued that the proposed rule rests on new conclusions based substantially on the same evidence the agency considered when reaching the opposite conclusions in 2015. Several commenters argued that if finalized, this rulemaking would likely violate the Administrative Procedure Act (APA) because the revisions reflect an unjustified and unsupported departure from the agency's prior position. Furthermore, these commenters maintain that the agency's explanation that changes are necessary to facilitate state compliance efforts is contrary to the evidence.

Commenters frequently pointed to EPA's 2015 WPS rule where EPA concluded that creating the AEZ was a necessary supplemental protection because the ''do not contact'' requirement was not sufficiently protecting people against harmful pesticide exposure. They also noted that EPA further cited specific instances of pesticide exposure beyond the boundaries of the agricultural establishment that the AEZ as finalized in 2015 could have prevented, but that a more limited AEZ would not. They suggested that the AEZ proposal reverses course entirely from that position and that it would be arbitrary and capricious to limit the AEZ without new evidence just five years after establishing the AEZ, with no explanation of why EPA's assessment of those facts in 2015 was incorrect.

Commenters dispute the reasons EPA presented to demonstrate the AEZ as established in 2015 is unworkable or difficult to administer. As evidence, the commenters cited EPA's reliance on feedback solicited and received in 2016 and 2017 through three venues:

- Training and outreach to state pesticide regulatory agencies;
- as part of EPA's ''Regulatory Reform Agenda'' efforts in 2017; and
- two meetings of the PPDC in 2017.

The commenters suggest that EPA's reliance on these venues to support the proposed change is irrational and mischaracterized.

For example, commenters maintain that feedback from EPA's training and outreach to state agencies in 2016 cannot form a rational basis for the proposal because EPA's own Inspector General concluded that the agency's training efforts to prepare the regulated community for compliance with the 2015 WPS were woefully deficient. Commenters cited a 2018 evaluation by the EPA Office of Inspector General (OIG) that found that ''essential'' training and implementation materials—including the WPS Inspection Manual and How to Comply manual—were not available through 2016 (Ref. 14). As a result, they cite that ''many state officials said they were not given the time, tools, or resources to successfully implement the revised WPS'' by January 2, 2017, the compliance date for certain revisions.

Commenters also discussed information received in response to the agency's ''Regulatory Reform'' solicitations in the spring of 2017, the provisions of the AEZ that the agency now proposes to modify were not even in effect at the time. The ''suspend application'' provisions of the AEZ had a compliance date of January 1, 2018. Commenters argued it would be irrational to rely on comments submitted in 2017 to support the proposition that the AEZ requirements are too hard to work with, when key requirements had not even come into effect.

Several advocacy organizations and the letter from the State AGs also commented on EPA's reliance on feedback from the Pesticide Program Dialogue Committee (PPDC), a federal advisory committee under the Federal Advisory Committee Act, 5 U.S.C. App.2, that consists of representatives from user/grower groups, environmental, public interest, and animal welfare groups, farmworker representatives, public health representatives, chemical and biopesticides industry and trade associations, state, local, and tribal government, and federal agencies. The commenters stated that EPA's reliance on PPDC's feedback is flawed, and that EPA failed to disclose that the PPDC met and decided that there were no AEZ issues that necessitated revoking or curtailing it, and that they believed any potential issues could be addressed through guidance, education, and training (Ref. 13). Commenters cited that in the transcript, an EPA official summarized the discussion with respect to AEZ by noting that ''what we largely talked about was the need to develop some additional and enhanced guidance around certain scenarios.''

2. *EPA Response.* The feedback EPA has received since finalizing the 2015 WPS, and the Agency's attempts at addressing these concerns, influenced EPA's approach to revising the AEZ requirements in the proposed rule. Based on the commenters' statements, EPA believes it is necessary to more fully describe the process and the record relied upon, provide more context on the steps taken to address issues raised between 2015 and the proposed AEZ rulemaking and why a departure from the 2015 WPS justification for the AEZ is both warranted and will not result in unreasonable adverse effects.

In late 2015 and early 2016, during the Agency's extensive outreach and training efforts for SLAs, some SLAs raised concerns about the AEZ requirements. Frequent comments about the AEZ included concerns about its complexity and enforceability, and that it would be difficult for states to provide compliance assistance in the absence of clear guidance from the Agency. In an effort to address some of the initial questions and concerns raised by SLAs during these efforts, EPA issued AEZ-specific guidance in April 2016 (Ref. 6). In the document, EPA interpreted the suspension requirement for people within the AEZ, but off the establishment, to mean that applications could resume if handlers take measures

to ensure workers will not be contacted by sprays, such as:

- Assessing the wind and other weather conditions to confirm they will prevent workers or other persons from being contacted by the pesticide either directly or through drift;
- adjusting the application method or employing drift reduction measures in such a way to ensure that resuming the application will not result in workers or other persons off the establishment being contacted by the pesticide;
- asking the workers or other persons to move out of the AEZ until the application is complete; or,
- adjusting the treated area or the path of the application equipment away from the workers or other persons so they would not be in the AEZ.

While this guidance addressed some of the issues raised, EPA continued to hear from SLAs and state associations representing SLAs regarding their concerns around the AEZ and the need for additional and clearer guidance on the AEZ specifically and the WPS in general (Refs. 7, 8). In an effort to address the concerns, EPA assisted a cooperative agreement partner on a comprehensive ''How-to-Comply'' manual, released in late 2016 (Ref. 15).

Despite these efforts, SLAs continued to bring to EPA issues regarding the AEZ. Several SLAs, AAPCO, and NASDA submitted comments on these issues under Executive Order 13777 about their concerns (Ref. 9). These commenters continued to express concerns about a lack of clear AEZ guidance and the resulting confusion for both growers and state pesticide regulatory agencies. These concerns were grounded in the SLAs' preparations to enforce the AEZ requirement and could not reasonably be ignored solely on account of preceding the AEZ compliance date, as commenters propose. As a result of these and other comments, EPA decided to raise this issue for discussion during the 2017 PPDC meetings.

During a meeting on May 4, 2017, EPA and PPDC members briefly discussed and flagged for further discussion the challenges in understanding the AEZ requirement, and obstacles to enforcement, compliance assistance, and education. On November 2, 2017 (Ref. 11), EPA and PPDC members discussed the AEZ in more detail. To clarify EPA's record, EPA acknowledges that the commenters are correct that the PPDC did not recommend that rulemaking was required to achieve better compliance with the AEZ requirements. Rather, the feedback EPA received on the AEZ revolved around the need for additional training and enhanced guidance around certain scenarios to ensure the success of the AEZ provision.

Following the PPDC's feedback on needing enhanced guidance, EPA completed a second AEZ guidance document. In the February 2018 guidance document (Ref. 12), EPA attempted to clarify the remaining issues on implementing the AEZ both on and off the establishment. Building upon the April 2016 guidance, EPA addressed the off-establishment AEZ by explaining what steps to take when someone enters the AEZ that is located off the establishment, when and under what circumstances handlers can resume pesticide applications that have been suspended, as well as providing more detail about how to evaluate situations and what measures can be taken when people are within the AEZ but off the establishment. Similarly, EPA updated the WPS Inspection Manual (Ref. 16) in August 2018 with some of the same language and references to the 2016 and 2018 guidance documents and additional guidance for inspectors on compliance and enforcement when persons are in the AEZ but outside of the boundaries of the establishment or within easements. This detailed information is provided in both the February 2018 guidance document, the 2018 WPS Inspection Manual, and the response to comments document for this rulemaking.

The guidance documents issued between 2016 and now clarify that applications near establishment boundaries can occur when people are in the AEZ but outside of the boundaries of the establishment, provided that the applicator/handler follows all labeling requirements and takes the appropriate steps to prevent contact from occurring. While EPA believed this to be a workable and reasonable solution for implementing the AEZ requirements off the establishment, SLAs continued to inform EPA that guidance did not adequately address their issues. In particular, even though an applicator/handler ensures that conditions are favorable or takes measures to prevent drift off the establishment, the AEZ regulatory text could be read as prohibiting the application and risking of an enforcement action, even if a contact does not occur. As one SLA stated in their public comment to the AEZ proposal, guidance does not ''carry the weight and authority'' of codified regulations, and that their state AG had advised their office that they would be ''on shaky ground were we to ignore the plain language of the Standard and regulate based on interpretative guidance.''

EPA agrees that guidance does not carry the weight of regulation, and that handlers and handler employers may be concerned about state or federal authorities taking a strict reading of the regulation. In addition, handlers unaware of the existing guidance may interpret the AEZ provision more strictly than necessary. For these reasons, EPA agrees it is best to revise the regulation itself to clarify that the AEZ does not extend beyond the boundaries of the establishment and does not apply on or in easements where agricultural employers do not have control.

Despite proposing to limit the AEZ to within the boundaries of the establishment, public comments submitted by SLAs, AAPCO, and NASDA on the proposal emphasized that workers and bystanders have many protections provided by:

- The whole suite of WPS requirements, including the AEZ on the establishment, the ''Do No Contact'' provision at 40 CFR 170.505(a), the REI, and others;
- the certification and training regulations governing applicators of RUPs; and,
- product-specific labeling requirements and the pesticide label statement which prohibits applications to be made in such a way that workers or other persons are contacted by pesticides, either directly or through drift. (Note: The ''Do Not Contact'' requirement is provided on labels as well as in the WPS.)

These requirements work together to protect people from exposure to pesticides during applications. The trained handler or applicator should understand the principles underlying the AEZ requirement and how it relates to the ''Do Not Contact'' requirement. Any applicator or handler with any reason to believe someone may be contacted during the application, should suspend the application until they can assure people would not be contacted by pesticides. Otherwise, the applicator or handler would be at risk of violating the WPS and FIFRA.

EPA's risk assessments and registration decisions presume that no workers or other persons are being sprayed directly. Before the WPS 2015 revision, details on how to comply with the ''Do Not Contact'' provision was limited. With the 2015 revision, EPA's intention with the AEZ requirement was to provide applicators and handlers with specific criteria for suspending applications and actions to prevent contact with pesticides during

applications. When developing the 2015 WPS rule, EPA found that incidents of exposure to drift or direct spray and other misuse violations continued to occur.

Based on the comments in opposing the changes, EPA recognizes that the AEZ proposed rule lacked important details and information on several fronts. Specifically, how the Agency intends to equip handlers with knowledge and tools to prevent contacting persons off the establishment with pesticides during applications; why the Agency believes the ''Do Not Contact'' provision is the most appropriate mechanism to prevent contacting persons off the establishment with pesticides; and why the ''Do Not Contact'' provision is adequately protective for persons off-establishment, despite the Agency's 2015 assessment.

The Agency believes that the enhanced training requirements of the 2015 WPS should substantially increase compliance with the ''Do Not Contact'' requirement. The AEZ requirement provides an extra measure of assurance that applications will not result in worker or bystander exposure. This extra measure of assurance may be considered a redundant protection, but EPA considered it appropriate based on its 2015 understanding that the burdens of compliance with the AEZ would be minimal, inasmuch as the handler and handler employer were already required to take all steps necessary to prevent contact to workers or other persons. The changes to the AEZ (making it inapplicable off-establishment and to easements and the immediate family exemption) reflect EPA's current understanding that in certain circumstances, the AEZ imposes burdens that are disproportionate to the need for the extra measure of assurance the AEZ is intended to provide.

D. Adequacy and Enforcement of the ''Do Not Contact'' Provision Versus the AEZ

1. *Comments.* Several farmworker advocacy groups, former pesticide regulators, and the State AGs' letter argue that the ''Do Not Contact'' provision has a history of shortcomings and despite the clear prohibition against spraying pesticides so as to contact workers or bystanders, EPA updated the WPS precisely because contact was still occurring. The commenters acknowledge that the ''Do Not Contact'' provision is an important mechanism, but it alone is not enough to protect workers and bystanders. Furthermore, several commenters argue that the ''Do Not Contact'' provision lacks specific guidance to the handler or applicator on how to comply with the provision and protect bystanders. By contrast, they point out that the AEZ provision clearly explains what must be done to protect workers and bystanders; spraying must be suspended if anyone is in the AEZ. While the ''Do Not Contact'' provision provides an important protection against pesticide poisoning, commenters argue that the vagueness and lack of instruction for the owner/applicator is part of what lead to the inclusion of the AEZ in the 2015 WPS.

Commenters argue that the AEZ proactively protects against pesticide poisoning by requiring the suspension of application *before* anyone is sprayed while in contrast the ''Do Not Contact'' provision can be enforced only after contact with pesticides has occurred. The ''Do Not Contact'' provision prohibits action that once violated will have already resulted in harm to workers. Thus, they argue that enforcement of the ''Do Not Contact'' provision does not in itself prevent harm in the first place. They argue, however, that enforcement of the AEZ could help prevent a dangerous incident from occurring.

One commenter cites two situations where California enforced the AEZ provision of the WPS. In January 2017, California amended its existing worker safety regulations to align with the 2015 Rule, creating state AEZ provisions, Cal. Code Regs. tit. 3, 6762, that are equivalent to the 2015 AEZ provisions. The commenter states that California enforced the AEZ requirement in at least two instances. On August 16, 2017, fieldworkers pruning tomato plants were exposed to pesticides during an application to melons less than 100 feet from where they were working. The fieldworkers suffered adverse health effects and two of them were taken to the hospital by ambulance. Similarly, on June 5, 2019, employees working with kiwi vines sought medical treatment after exposure to pesticides during an application at a different site less than 100 feet away. In both cases, the county agricultural commissioners issued administrative civil penalties based on violations of the California AEZ provisions. The commenter states that California has not encountered the challenges implementing the AEZ requirement that EPA has invoked as the reason for the Proposed Rule. They argue that California's regulations—which mirrors the federal AEZ provisions—have not been difficult to enforce, are not confusing or unnecessary, and that it shows that the AEZ requirements are effective and can be implemented.

At least two other commenters explained that a situation in Texas that they felt showed it is easier to enforce violations of the AEZ requirement than the ''Do Not Contact'' provision. In April 2019, an employee for a nonprofit organization saw a pesticide being applied from a plane in a field immediately north of another field where more than 60 workers were working. The two fields belonged to different owners. The complaint was eventually denied because, regardless of the workers' proximity to the aerial spray, the inspector believed they would not have been physically contacted by the pesticides under those conditions. The commenters argue this demonstrates that the ''Do Not Contact'' provision can be difficult to enforce, and it would be easier to prove violations of the AEZ provision.

Overall, the comments argue that EPA's claims in the proposal are false. Specifically, commenters argue that EPA's claims that the AEZ offers no more protection than the ''Do Not Contact'' provision already provides, and that curtailing the AEZ would not reduce protections are false and are entirely inconsistent with the findings in 2015 that the AEZ was a necessary supplement to the ''Do Not Contact'' provision. Furthermore, they state that EPA does not dispute its findings in 2015 that without the AEZ in place, people are still being sprayed, creating an unreasonable risk.

2. *EPA Response.* EPA disagrees with commenters on the assertion that enforcing the ''Do Not Contact'' provision does not prevent harm in the first place. The ''Do Not Contact'' provision applies in all situations and application scenarios, regardless of whether the AEZ is required or has been followed. The primary safety goal of any application is to prevent pesticides from contacting people. Complying with the AEZ does not absolve handlers or handler employers from that primary responsibility. A handler could comply with the AEZ during an application and yet fail to follow all pesticide labeling requirements such that pesticide contacts people outside of the AEZ. The combination of following labeling requirements based on EPA's product-specific risk assessments and the WPS requirements together play a role in protecting human health. Reinforcing the need to not spray people is a key piece of that equation.

The requirement to suspend application if people other than trained and equipped handlers are in the AEZ was intended to act as a supplement or guide for applicators on the ''Do Not Contact'' requirement by giving the

applicator specific criteria for suspending applications. It was EPA's intent that these specific criteria would be useful to applicators attempting to comply with the existing ''Do Not Contact'' requirement beyond the boundaries of the agricultural establishment.

Regardless of whether it is easier in a particular instance to prove a violation of the AEZ requirement or of the do not contact requirement, the goal of the WPS is not to create easily proven violations but to reduce adverse effects to human health and the environment. EPA believes that the combination of protections created by the 2015 WPS, notwithstanding the revisions in this final rule, appropriately achieves that goal. The comments suggest a misplaced emphasis on creating easily proven violations, irrespective of adverse effects. EPA is not aware of any AEZ violation having been enforced without pesticide without contact occurring first, such as the two cases in California. In the Texas incident cited by the commenters, the inspector did not find a WPS violation because there was no evidence to suggest that pesticide contact could have occurred given the workers' proximity to the application, the application method, and variables such as weather, wind speed and direction, and vegetation. This is likely due, in part, to EPA's guidance on how to implement the AEZ off the establishment, which has interpreted the requirements at 40 CFR 170.505(b) to mean that applications can resume after the handler has assessed the conditions or used various safety measures to prevent a situation where individuals could be sprayed accidentally.

Despite EPA's best efforts to offer clarity and a workable solution through guidance, incongruity remains between EPA's interpretation of the ''suspend'' requirement as a temporary measure until handlers take appropriate steps, and how others may interpret the language at 40 CFR 170.505(b) to mean something more strict or permanent. For example, even though a handler could follow the steps in guidance and EPA-approved training and apply the pesticide safely without it contacting a person off the establishment, a state regulator could take an enforcement action against them if they held a strict reading of the regulatory requirement to suspend the application. While changes in this final rule rectify this difficult situation, the goal to prevent pesticide from contacting others will continue to be met through required WPS training, including training on how to comply with the ''Do Not Contact'' requirement. Thus, EPA is open to working with the various stakeholder groups on other training or educational materials so that handlers have the information and tools so as not to spray pesticides in a manner that results in contact with anyone on or off the establishment.

E. EPA's Cost Analysis for the AEZ Proposal

1. *Comments.* Several commenters, including several advocacy groups and the joint State AGs letter, argue that EPA's cost analysis for the AEZ proposal fails to adequately justify the proposed revisions of the AEZ. Some of the commenters cite EPA's 2015 cost analysis indicating that the benefits of extending the AEZ beyond the agricultural establishment's boundaries could be substantial while the burden on applicators to temporarily suspending applications was minimal.

One commenter states that while the benefits of the proposal presumably correspond to reducing the ''complexity'' costs of the 2015 AEZ provisions, it is hard to see how a provision that requires the size (and shape) of the AEZ to change as the application equipment moves is less complex than a rule establishing an AEZ of a constant size and shape. Yet, EPA appears to be drawing a different conclusion now without any effort to explain why it has changed its view of the benefits and costs of maintaining the larger AEZ. In sum, they argue that EPA's characterization of the costs and benefits of applying the AEZ protections beyond the agricultural establishment's boundaries in the AEZ proposed rule is at odds with the rationale EPA presented in 2015 to justify the AEZ provision.

Another commenter states that the Agency has arbitrarily failed to quantify the costs of the increased pesticide exposure that would result from the proposal. Specifically, the comment cites that EPA's acknowledgement in the proposal that farmworkers and others benefit from extending the AEZ boundary beyond the agricultural establishment, but without explanation or support, the proposal characterizes these benefits as ''minimal.'' Furthermore, the Cost Analysis includes no discussion—whether quantitative or qualitative—of the costs of foregoing these protections, or of the increased risks to farmworkers or others of limiting the AEZ to within the boundaries of the establishment. Instead, they argue that the Cost Analysis states that ''EPA is unable to quantify any increased risk of pesticide exposure from revising the AEZ requirements'' and that the Agency asserts without explanation or support that any increase in this risk ''may be negligible.'' The Agency cannot avoid its obligation to analyze the consequences that foreseeably arise merely by saying that the consequences are unclear. The EPA's refusal to quantify the costs of the proposal, including the costs of adverse impacts to human health, is striking given the agency's statutory mandate under FIFRA to protect humans and the environment from unreasonable adverse effects of pesticides. As a result, the commenter argues that the APA does not permit the agency to ignore so central an evidentiary question.

Another commenter argues that the agency failed to support its assessment of the benefits of weakening the AEZ. EPA first claims that the proposal is expected to reduce the burden of compliance and lead to cost savings, but then predicts that ''[i]n general, revising the AEZ requirement is not expected to result in any quantifiable cost savings for farms covered by the WPS.'' The commenter then states that an ''analysis that predicts cost savings but refuses to quantify those savings—indeed, that claims any such savings cannot be quantified—is not a rational basis for revising the AEZ.''

The commenters argue that given these flaws, the AEZ revisions would be arbitrary and capricious if finalized.

2. *EPA Response.* The economic analysis (2015 EA) (Ref. 17) for the 2015 WPS rule was more comprehensive than the cost analysis for the AEZ proposal. However, the level of analysis specific to the AEZ provision in the 2015 EA was similar to what was contained in the cost analysis for the AEZ proposal. In the 2015 EA, the costs of the AEZ were qualitative, and assumed to be low as the AEZ was designed to supplement the ''Do Not Contact'' requirements of the WPS and the label that establish the responsibility of the applicator to prevent pesticides from contacting people. In both the 2015 EA and the cost analysis for the AEZ proposal, the discussion was qualitative and appropriate for a rule change that has impacts on application requirements and change in risks of exposure that cannot reasonably be quantified. A qualitative discussion of the potential effects of the rule is appropriate in the absence of information on which to base quantitative estimates. EPA's action for this rulemaking is consistent with the APA.

EPA's statement that changes to the AEZ in the proposed rule would reduce complexity was referring to restricting the AEZ to the establishment, removing the complex definition of droplet sizes

based on the Volume Median Diameter (VMD), and making the size of the AEZ consistent across application methods. Although restricting the AEZ to the establishment does potentially change the size and shape of the AEZ near the edges of the establishment, it does reduce complexity because, in situations where the applicator is able to apply the pesticide without contacting any person, the applicator would not be required to suspend solely on account of the presence of persons who are outside the control of the agricultural employer. If the AEZ extends to persons outside the control of the agricultural employer (either off the farm or on farms through an easement), then the agricultural employer would be unable to fulfill his or her obligation to exclude those people. As a result, this could cause the application to halt for extended periods of time despite the applicator's ability to take other measures to prevent drift from contacting those people.

The commenters suggested that EPA did not consider the costs of changing the AEZ in the proposal, which they felt would increase the risks of pesticide exposure to people who would have been within the AEZ but off the establishment, within the AEZ and within an easement on the establishment, or in between the 25 and 100 feet area from application equipment, if the size of the AEZ were reduced on the establishment for some application methods. EPA evaluated the potential for increased risk, and concluded that the ''Do Not Contact'' requirement, the changes to the WPS-required training content in 2015, and the suite of requirements in the 2015 WPS rule provide effective protection from pesticide exposures during applications.

F. EPA's Determinations on Environmental Justice (Executive Order 12898) and Children's Health (Executive Order 13045)

1. *Comments.* Several advocacy commenters, individuals with public health expertise, State AGs, and general public commenters argued that EPA failed to comply with its obligations under Executive Order 12898 to address environmental justice (EJ) in minority populations and low-income populations. Under Executive Order 12898, federal agencies are directed to identify and address disproportionately high and adverse human health or environmental effects of their policies on minority populations and low-income populations in the United States. Commenters argue that the proposal does not meaningfully address its EJ impacts. Commenters argue that EPA relies on an unsupported conclusion that the proposal ''would not have disproportionately high and adverse human health or environmental effects on minority or low-income populations.'' Commenters suggest that by EPA failing to take a ''hard look'' at EJ issues in its review and to identify any method or analysis, the agency's analysis in the proposal would likely fail to satisfy the APA's arbitrary-and-capricious standard.

Similarly, commenters argue that EPA failed to comply with Executive Order 13045, which requires agencies to identify and assess health and safety risks that may disproportionately affect children and ensure that activities address disproportionate risks to children. Commenters cite examples of exposures involving children as well as various studies and information cited within the 2015 WPS indicating risks toward children; they argue based on this information, EPA did not fully consider how eliminating the off-establishment AEZ would impact children near the boundaries of establishments.

2. *EPA Response.* EPA does not believe this rulemaking will have disproportionately high and adverse human health or environmental effects on minority or low-income populations, nor will it have a disproportionate effect on children. EPA does consider the environmental and health protections for risks of agricultural pesticides to all potentially affected populations and addresses them in two ways. First, EPA manages the risks and benefits of each pesticide product primarily through registration and labeling requirements specific to each pesticide product. Routine pesticide registration reviews, and subsequent labeling directives as a result of those reviews, take into account protecting *all* groups, including vulnerable groups (*e.g.,* children and EJ communities). Second, the framework provided by the 2015 WPS is critical for ensuring that the improvements brought about by reregistration and registration review are realized. Therefore, if agricultural pesticide products are used according to their labeling, EPA does not expect there to be unreasonable adverse effects to children, EJ communities, or anyone else. Compliance assistance and enforcement also play a role in ensuring that risk mitigation measures are appropriately implemented in the field.

As indicated by the commenters, the 2015 WPS went through an exhaustive public participation to incorporate a number of safety mechanisms into the regulation, and extensively engaged farmworker representatives, and when possible, worked directly with workers and handlers, to solicit their feedback and ideas for improvements. Some of these retained requirements and improvements to the WPS that promotes safety included enhanced and expanded training, and notifications; adding protection requirements such as the AEZ on the establishment; the ''Do Not Contact'' requirement and REIs; mitigating exposures by having decontamination supplies available and ensuring that workers receive emergency assistance if necessary; and establishing a minimum age of 18 for handler and early entry worker duties. EPA remains committed to ensuring the long-term success of the WPS and continues to support ongoing implementation efforts that arose from these interactions. This includes funding various cooperative agreements that support implementation and education and reviewing and approving all trainings to ensure appropriate information is provided to both workers and handlers on pesticide safety.

One of the areas that has seen a significant improvement as a result of that feedback involves that of enhanced training in place since the end of 2018. These enhanced trainings for workers and handlers include more steps on how to minimize worker and handler exposure and that of the families from pesticide residues carried from the treated areas to the home. In one cooperative agreement funded by EPA, early data provided to the Agency has shown worker knowledge gains as a result of these improved trainings, which have been provided in the field for over a year (Ref. 18). While EPA does not have similar information regarding knowledge gains for handlers, EPA expects that handler trainings have also increased the overall understanding of the requirements to ensure safer applications of pesticides. For example, the requirement for handlers to receive training and instruction on how to use the pesticide and the application equipment for each application is one way to inform handlers of updated product labeling requirements so as not to apply pesticides in a manner that will harm themselves, workers, the public, or the environment.

EPA-approved trainings since 2018 (83 FR 29013; June 22, 2018) have also incorporated EPA's 2016 guidance on how to apply pesticides near establishment borders and provide information on various measures applicators or handlers can take to prevent individuals from being contacted by spray or through drift. Those measures include:

• Assessing the wind and other weather conditions to confirm he/she will prevent workers or other persons from being contacted by the pesticide either directly or through drift;
• Adjusting the application method or employing drift reduction measures in such a way to ensure that resuming the application will not result in workers or other persons off the establishment being contacted by the pesticide;
• Asking the workers or other persons to move out of the area until the application is complete; or
• Adjusting the treated area or the path of the application equipment away from the workers or other persons so they will not be sprayed.

EPA believes that by having incorporated this information into EPA-approved training, handlers have the information they need to safely apply pesticides when the establishment's owner and handler lack control over people's movements off the establishment. Based on this information already existing on how to comply with the ''Do Not Contact'' requirement of the WPS, EPA does not believe the change to limit the AEZ to within the boundaries of the establishment will result in unreasonable adverse effects for any persons, including EJ communities or children, off the establishment. EPA remains committed to the goal of conveying this information accurately and consistently through training and supplemental education materials, and the Agency is open to working with its stakeholders to ensure the information is current and available.

In regard to the proposed changes to simplify the AEZ criteria for ground applications (*i.e.,* establish an AEZ of 25 feet when sprayed at a height greater than 12 inches) on the establishment, EPA determined that these changes would not result in unreasonable adverse effects on farmworker communities because the ''Do Not Contact'' requirement remains in effect. These changes would not result in unreasonable adverse effects on children because of the minimum age requirement prohibiting children under the age of 18 from participating in handler or early entry worker activities also remains in effect. Additionally, since the owner has control over the movement of people on his or her establishment, the owner can schedule applications and worker activities around each other to prevent potential conflicts with the AEZ and the ''Do Not Contact'' provision. With proper planning, EPA believes this to be of minimal impact on the establishment.

Commenters cited studies, such as those from Felsot *et al.* (Ref. 19) and Kasner *et al.* (Ref. 20), that show that pesticide applications using fine sprays are prone to drift greater than 25 feet. Some commenters instead recommended a simplified 100-foot AEZ to ensure that protections would be increased while meeting EPA's stated goal of simplifying the AEZ. Drift potential is based on a number of factors in addition to droplet size, and the AEZ is designed to work in tandem with other provisions to ensure no contact and other label requirements (to reduce drift) to protect workers. Simplifying the AEZ criteria can help handlers better understand and implement the AEZ requirements successfully and promotes awareness on how to comply with the ''Do Not Contact'' provision. Additionally, all handlers must take EPA-approved trainings addressing how the AEZ facilitates compliance with the ''Do Not Contact'' provision, and by simplifying the AEZ message, EPA expects that these annual trainings will better inform handlers' decision-making in regard to preventing contact even where the AEZ requirement does not apply. EPA believes that the potential costs and burdens for establishment owners to move workers who are within 100 feet of all ground spray applications would be disproportionate to the benefits, particularly when making applications using a medium or larger spray quality. Therefore, EPA has decided to finalize the AEZ distance requirements on the establishment as proposed. Specifically, EPA is establishing a 25-foot AEZ for all sprayed applications made from a height greater than 12 inches from the soil surface or planting medium, and no longer differentiating between sprayed applications based on the spray quality or other factors for setting different AEZ distances for outdoor production. EPA will maintain the existing AEZ distances of 100 feet for pesticide applications made by the following methods: Aerially; by air blast or air-propelled applications; or as a fumigant, smoke, mist or fog. This issue is discussed in more detail in Unit V.C.

G. Procedural Mandates of FIFRA

1. *Comment.* One commenter argued that EPA violated FIFRA's procedural mandates. The commenter cites the requirement at Section 21(b) that before publishing regulations for ''any public health pesticide,'' the EPA Administrator ''shall solicit the views of the Secretary of Health and Human Services in the same manner as the views of the Secretary of Agriculture are solicited under Section 25(a)(2).'' The commenter further cites the definition of ''public health pesticide,'' which is defined at FIFRA Section 2(nn) as ''any minor use pesticide product registered for use and used predominantly in public health programs for vector control or for other recognized health protection uses, including the prevention or mitigation of viruses, bacteria, or other microorganisms (other than viruses, bacteria, or other microorganisms on or in living man or other living animal) that pose a threat to public health.'' The commenter then states that for such pesticides, ''[a]t least 60 days prior to signing any proposed regulation for publication in the **Federal Register**, the Administrator shall provide [the Secretary of Health and Human Services] a copy of such regulation.''

The commenter argues that the protections provided by the WPS applies to all agricultural pesticides, including public health pesticides, and that EPA was required to send a copy of the proposed rule to the Secretary of Health and Human Services (HHS) before it published the proposal in the **Federal Register**. By not doing so, the commenter claims EPA violated this procedural mandate in FIFRA.

2. *EPA Response.* EPA disagrees with this comment. The WPS only applies to agricultural establishments, where agricultural pesticides are used on agricultural plants (''any plant grown or maintained for commercial or research purposes and includes, but is not limited to, food, feed, and fiber plants; trees; turfgrass; flowers, shrubs; ornamentals; and seedlings''). See 40 CFR 170, Subpart D, for the scope, applicability, and definitions for ''agricultural establishment'' and ''agricultural plant''. Conversely, Section 21(b) only applies to ''public health pesticides'' as defined in Section 2(nn) and quoted above.

Because this rulemaking applies only to agricultural pesticides used on agricultural plants on agricultural establishments, and not to ''public health pesticides'' as defined in FIFRA, the Agency is not required to solicit the views of the Secretary of HHS in regard to this rulemaking.

V. The Final Rule

A. Revisions To Address Issues Raised About the AEZ Extending Beyond the Boundary of the Establishment

1. *Proposal.* EPA proposed to revise the AEZ provision at 40 CFR 170.505(b) that requires handlers to ''suspend the application'' if a worker or other person is in the AEZ, which as written in the 2015 WPS can extend beyond the

boundaries of the agricultural establishment. EPA proposed to limit the AEZ to within the boundaries of the agricultural establishment. This change would make the requirement at 40 CFR 170.505(b) for pesticide handlers to suspend applications consistent with the requirement at 40 CFR 170.405(a)(2) for agricultural employers to exclude persons from the AEZ.

The AEZ is an area surrounding pesticide application equipment that exists only during outdoor pesticide applications. The 2015 WPS added the AEZ requirements to supplement the ''Do Not Contact'' requirements to reduce the number of incidents of exposure to pesticides during agricultural applications. The 2015 WPS requirement at 40 CFR 170.505(b) required pesticide handlers (applicators) making a pesticide application to temporarily suspend the application if any worker or other person (besides trained/equipped handlers assisting in the application) is in the AEZ. The handler must suspend an application if a worker or other person is in any portion of the AEZ—on or off the establishment. EPA proposed to revise 40 CFR 170.505(b) so the handler/applicator would not be responsible for areas of AEZ off the establishment, where he/she lacks control over persons in the AEZ. However, EPA did not propose any changes to the existing provision in the 2015 WPS that prohibits a handler/applicator and the handler employer from applying a pesticide in such a way that it contacts workers or other persons directly or through drift (other than appropriately trained and PPE equipped handlers involved in the application). This provision will remain the key mechanism for ensuring the protections of individuals off the establishment from the potential exposures to pesticides from nearby agricultural pesticide applications.

2. *Final Rule.* In the final rule, EPA has adopted the proposed changes to limit the AEZ to within the boundaries of the establishment in those areas where the agricultural employer has control over persons on the establishment.

3. *Comments and Responses.* a. *Comments.* Two SLAs, AAPCO, NASDA, several agricultural stakeholder associations, and farm bureaus expressed general support for EPA's proposal to limit the AEZ to within the boundaries of the establishment. These commenters cited some of the previously identified concerns associated with the AEZ off the establishment, where the establishment owner has no legal control or authority over anyone outside the establishment and could thereby impact applications long-term and potentially on a permanent basis depending on the presence of fixed structures. Additionally, commenters from SLAs, AAPCO, and NASDA expressed support for this revision because it creates more consistency between the owner and handlers' responsibilities under the WPS and clarifies the plain language of the requirement to be consistent with EPA's interpretive guidance. These commenters also expressed that minimizing and managing risks of pesticide exposure to all persons is central to their missions, and that extending such protections to individuals who are not agricultural workers or handlers is more properly accomplished by other means, such as the protections afforded under the ''Do Not Contact'' provision.

Several commenters from farmworker advocacy groups, public health professionals/associations, and commenters from the general public expressed opposition to the proposal to limit the AEZ requirements to within the boundaries of the establishment. Commenters argued that the proposed limitation of the AEZ to the boundaries of the farm would lessen protections for workers who might be exposed to drift from a neighboring farm, citing various example of cross-boundary drift situations. These commenters have argued that a robust implementation of the AEZ might have protected workers on adjacent fields from being sprayed. Frequently, commenters noted that drift does not stop at boundary lines, that the AEZ requirement is necessary and not confusing. Therefore, they argue it should be maintained both on and off the establishment and for those working on or in easements.

Commenters argued that limiting the AEZ to the boundaries of the farm would lessen protections, and that it is irrelevant whether the applicator (or the agricultural employer or the owner of an agricultural establishment) has control over a person who is outside of the boundaries of the agricultural establishment. One commenter stated that if such a person is in the AEZ, there is a very high risk that the person is close enough to be sprayed by the pesticide, and the applicator should (and the current AEZ provision would require him/her to) suspend the application to give such individuals a chance to move away. The commenter further argued that restricting the AEZ to land within the agricultural establishment would significantly diminish the protection of bystanders. Further, the commenter suggested that the notion to make the duty of the agricultural employer and the applicator ''more consistent'' ignores the fact that these distinct duties usually rest on different people, stating that applicator typically works for the agricultural employer, and each would need training on the different duties imposed.

Commenters also argued that it is necessary that the AEZ apply beyond the boundaries of the agricultural establishment because it protects people who might otherwise be sprayed with a pesticide, citing EPA's analysis in the 2015 WPS that including the area of the AEZ outside the boundaries of the agricultural establishment could potentially reduce unintended pesticide spray contact incidents four- to ten-fold. Commenters stated that EPA provided no rationale for why maintaining such a significant increase in protection is ''unnecessary,'' and stated that having an inconsistent shape (*i.e.,* the AEZ no longer being a consistent shape around the application equipment for off the establishment and for workers in easements) could actually be more confusing and complex to implement.

Similarly, commenters stated that removing AEZ protections for persons on or in easements should not be finalized, and that using the scenarios of ''easements'' and ''utility workers'' as a rationale for allowing pesticide applications to be resumed even when someone is still within the AEZ is potentially misleading. Commenters expressed concerns that, due to the use of conditional language (''persons not employed by the establishment are present on easements that may exist . . . . The owner or ag employer may be unable to control the movement of people''), this revised requirement could be used as rationale to resume application while anyone is present within the AEZ, including people willing to vacate the area during the application, as well as those who are not on an easement. They argue that even if the conditional language is removed, people in easements should continue to be protected by EPA regulations, and that the rationale that people on easements are not within an owner's control ''in whole or in part'' should not deprive them of their right to be protected. For those in easements, one commenter offered the solution to post a notice on the boundary of the easement about the date and time of pesticide application, so that individuals are empowered to leave the area so they can avoid being exposed to pesticides.

b. *EPA Response.* EPA disagrees with the commenters that the change to limit the AEZ within the boundaries of the

establishment will result in protections being weakened. As stated in Unit IV.B above in previous responses to the overarching comments, handlers are still required to comply with the ''Do Not Contact'' requirements in the WPS and on pesticide labels. This requirement is applicable regardless of distance from the application equipment, and regardless of whether the persons are on or off the establishment or within easements.

Additionally, EPA believes that the enhanced training requirements of the 2015 WPS will significantly improve compliance with the ''Do Not Contact'' requirement. These annual trainings (versus every 5 years under the previous rule) include best practices to prevent exposure during applications and are consistent with how EPA has been interpreting and implementing the AEZ off the establishment. To reiterate these best application practices covered in the new training materials, these measures include:

- Assessing the wind and other weather conditions to confirm he/she will prevent workers or other persons from being contacted by the pesticide either directly or through drift;
- Adjusting the application method or employing drift reduction measures in such a way to ensure that resuming the application will not result in workers or other persons off the establishment being contacted by the pesticide;
- Asking the workers or other persons to move until the application is complete; or
- Adjusting the treated area or the path of the application equipment away from the workers or other persons so they will not be sprayed.

While the AEZ will no longer apply off the establishment or to persons on the establishment pursuant to easements as a regulatory requirement, agricultural employers and handler employers must still include the AEZ as one of the safety measures in their trainings. Trained handlers will understand the principles underlying the AEZ and how it facilitates compliance with the ''Do Not Contact'' requirement, and that training will help inform their decision-making in regard to preventing contact with persons outside the establishment or present under an easement. EPA is committed and open to working with stakeholders to ensure that this information is presented to handlers in a clear and effective manner to impress upon handlers their responsibility under the WPS to not spray pesticides in a manner that results in contact in any situation.

EPA also disagrees with the commenters that requiring the AEZ only on the establishment would be more complex or confusing. For example, owners already have the responsibility of not allowing or directing any worker or other person not involved in the application to enter or remain in an AEZ that is within the establishment's boundaries. As indicated in the public comments submitted by NASDA, this change brings the pesticide handlers' duty to suspend applications in 40 CFR 170.505(b) in line with the agricultural employers' duty to exclude persons from the AEZ in 40 CFR 170.405(a)(2), so the two requirements will be consistent and will be noted as such in handler trainings.

B. Revisions To Address Issues Raised by SLAs Regarding When Handlers May Resume an Application That Has Been Suspended

1. *Proposal.* EPA proposed to revise the AEZ provision at 40 CFR 170.505(b) to add a paragraph clarifying conditions under which a handler may resume an application that was suspended because of people present in the AEZ on the agricultural establishment. The proposed revision of 40 CFR 170.505(b) would also clarify how the AEZ applies to persons not employed by the agricultural establishment who may be in easements (*e.g.,* gas, mineral, utility, or wind/solar energy workers) that may be within the boundaries of the establishment. These people are generally not within the control of the owner or agricultural employer of the establishment, so their presence could disrupt and prevent pesticide applications. EPA did not propose any changes to the existing ''Do Not Contact'' provision in the WPS.

The 2015 WPS rule was silent on if and when a handler could resume an application that was suspended, because workers or other people were present in the AEZ. EPA never envisioned that the AEZ requirement would lead to an application being suspended permanently, and the proposed change makes EPA's expectations explicit. EPA therefore proposed to revise the WPS to clarify that handlers may resume a suspended application when no workers or other persons (other than appropriately trained and equipped handlers involved in the application) remain in an AEZ within the boundaries of the establishment.

EPA also proposed language to allow applications to be made or resume while persons not employed by the establishment in easements that may exist within the boundaries of agricultural establishments because, depending on the terms of the easement, the owner or agricultural employer may be unable to control the movement of people (*e.g.,* utility workers) within the easement. The 2015 AEZ requirement at 40 CFR 170.405(a)(2) precludes an application from being made on an agricultural establishment while workers or other people are in the AEZ within the boundaries of the establishment. In developing the original AEZ requirement, EPA presumed that all persons on an agricultural establishment would be subject to the control of the owner or agricultural employer, not recognizing the prevalence of easements which deprive the landowner of the ability, in whole or in part, to control the movement of persons within the easement. The proposed revisions at 40 CFR 170.505(b) address this situation by allowing handlers to make or resume an application despite the presence within the AEZ of persons not employed by the establishment who are working on or in an area subject to an easement. These individuals will still be protected by the ''Do Not Contact'' provision, so even though they could remain in an easement, the handler and the handler employer would be prohibited from allowing the pesticide application to result in any contact to these persons. The proposed revision to the regulatory text would be codified at 40 CFR 170.505(b).

2. *Final Rule.* In the final rule, EPA has adopted the proposed changes regarding when applications can resume after they have been suspended.

3. *Comments and Responses.* a. *Comments.* Several agricultural stakeholders, advocacy groups, and one SLA association expressed support for clarifying that applications can be resumed once all individuals within the AEZ have left the area, other than those permitted by the regulation. All commenters cited the importance of providing clarity and aiding applicators in making better decisions regarding how to abide by the AEZ requirements.

However, several advocacy groups disagreed with the proposed change to limit the AEZ to within the boundaries of the establishment. They were against allowing handlers to continue to spray while individuals on adjacent properties were within the 25 and 100-foot AEZ distances as required in the 2015 WPS Rule. Additionally, the commenters expressed opposition to EPA's proposed changes which would allow the following groups of people to remain within the AEZ during applications:

- People who are present within the boundaries of the agricultural

establishment because their presence is allowed pursuant to an easement, and

• People who are in the immediate family of the owner of the agricultural establishment.

b. *EPA Response.* EPA agrees with the commenters that revisions to clearly explain when applications can resume after being suspended are important and provide clarity not afforded under the 2015 WPS regulatory language. While the notion of suspending applications was implicitly meant to apply only until individuals not participating in the application have left the AEZ, EPA plans to move forward with the proposal to ensure that it is explicitly stated that suspended applications may resume once people leave the AEZ.

Regarding the commenters who disagreed with EPA's other proposals, those issues have been addressed more specifically in Sections A, C, and D of this Unit.

C. Revisions to Clarify and Simplify the AEZ Requirements for Outdoor Production

1. *Proposal:* EPA proposed to revise the criteria and factors for determining AEZ distances at 40 CFR 170.405(a). EPA proposed the following revisions to simplify the AEZ requirements while maintaining the protections intended under the 2015 WPS:

• Eliminate the language and criteria pertaining to spray quality and droplet size and VMD for ''sprayed applications''.

• Limit the criteria for 100-foot AEZ distances for outdoor production to pesticide applications made by any of the following methods: (1) Aerially; (2) by air blast or air-propelled applications; or (3) as a fumigant, smoke, mist, or fog.

• Establish a 25-foot AEZ for all sprayed applications made from a height greater than 12 inches from the soil surface or planting medium, and no longer differentiating between sprayed applications based on the spray quality or other factors for setting different AEZ distances for outdoor production.

Some pesticide labels will have restrictions for applications that are different than the criteria in the 2015 WPS or this AEZ rulemaking. For example, the restrictions on soil fumigant labels are more restrictive than the AEZ of 100 feet. In situations like this, pesticide users must follow the product-specific instructions on the labeling. As stated in 40 CFR 170.303(c) and 170.317(a), when 40 CFR part 170 is referenced on a pesticide label, pesticide users must comply with all the requirements in 40 CFR part 170, except those that are inconsistent with product-specific instructions on the pesticide product labeling.

2. *Final Rule.* EPA has finalized the AEZ distances of 25 and 100 feet as proposed. Also as proposed, EPA has removed the criteria of spray quality and droplet size for determining whether a ground spray is subject to a 25-foot or 100-foot AEZ, and has established a 25-foot AEZ for all ground spray applications made from a height greater than 12 inches from the soil surface or planting medium.

3. *Comments and Responses.* a. *Comments.* Farmworker advocacy group commenters, individuals within the public health field, former pesticide regulators and several general public commenters recommended that EPA keep the regulations for application method, height, and criteria as written in the 2015 WPS. While some acknowledge that problems with clarity and compliance exist, they state that the original criteria were a step in the right direction to protect workers and bystanders from direct spray and from drift. They claim that making the proposed changes would eliminate the AEZ entirely for applications of fine droplet size sprayed at 12 inches or lower and significantly reduces the AEZ for those that are sprayed higher than 12 inches in general. They argue that because pesticides sprayed with a fine droplet size are most prone to drift, the AEZ should be wider in those cases, not narrower. Commenters cited studies showing that pesticide applications using fine or smaller sprays are prone to drift greater than 25 feet. Finally, they maintain that EPA did not present any new or compelling evidence to support the changes in criteria.

A couple of commenters discussed that having a single distance requirement for the AEZ for each application method is a logical choice and doing so would moot any conflicts over terminology to describe spray droplet characteristics. However, they argue that a problem with EPA's proposals—to eliminate the AEZ for spray applications of fine droplets released less than one foot off the ground and to set a standard, 25-foot AEZ for all other ground spray applications—is that a pesticide spray composed of tiny droplets will easily move farther than 25 feet. They state that EPA has the capability, but failed to analyze, how much and how far a pesticide spray application could be expected to travel, and that such an analysis would show that a large percentage of the spray would drift outside a 25-foot AEZ under common weather conditions. One commenter argued that EPA's proposal also completely ignored the more protective (and equally straight-forward and enforceable) option of setting a standard AEZ of 100 feet for all ground spray applications. Finally, commenters stated reducing the AEZ distance from 100 to 25 feet significantly reduces the size of the AEZ for ground spray applications with fine droplet sizes from ~31,415 square feet to ~1,963 square feet, a reduction of ~93%.

b. *EPA Response.* In choosing a 25-foot AEZ for ground applications above 12 inches, EPA sought one simplified AEZ criterion for ground spray applications that would maintain protection while alleviating the complexity. During repeated outreach and training events during WPS implementation efforts after the 2015 rulemaking, it became clear to EPA that there was a great deal of confusion and misunderstanding regarding the AEZ requirements and the criteria for determining the appropriate AEZ distance. Comments on simplifying the AEZ, which are summarized below, included:

• It would be very difficult to enforce the AEZ requirements in many circumstances, because it would be challenging to determine what the AEZ should have been during an application in many situations, unless it is simplified or there were additional recordkeeping requirements.

• The current rule refers to factors and criteria for determining the AEZ (*i.e.,* droplet size and ''volume median diameters'' or VMDs) that are no longer appropriate based on new information from the American Society of Agricultural and Biological Engineers (ASABE). The ASABE standards regarding the criteria for the droplet size classification system have been revised multiple times, thereby resulting in the VMD of 294 microns established under the 2015 WPS being no longer appropriate. An AEZ distance based on this factor makes it difficult for some applicators to determine their required AEZ. This has resulted in confusion and difficulty in complying with the AEZ requirement.

• The AEZ distances are currently based on factors that make it difficult for some applicators to determine their required AEZ, making it difficult to comply with the requirement. The complexity has resulted in many calling for the elimination of the AEZ altogether.

• Although there is a good rationale and basis for the AEZ requirement, it needs to be simplified to make it more practical, understandable, and easier to implement.

The Agency considered maintaining the spray quality and spray droplet criteria from the 2015 WPS. EPA agrees that sprays may drift greater than 25 feet and smaller droplet sizes increase the drift potential. In addition to spray droplet size, numerous factors impact the potential for spray drift, including application method, wind speed and direction, temperature and humidity, nozzle release height, pesticide formulation, terrain and target crop. The Agency's efforts, however, are to develop a simplified approach that is easier to understand and implement while still providing necessary guidance on how to comply with the overarching ''Do Not Contact'' requirement.

EPA also considered the recommendation by several public commenters to simplify the AEZ by establishing a 100-foot AEZ for all ground spray applications above 12 inches. EPA agrees with the commenters that a 100-foot AEZ would simplify the criteria. However, EPA believes that the potential costs and burdens for establishment owners to move workers who are within 100 feet of all ground spray applications would be disproportionate to the benefits, particularly when making applications using a medium or larger spray quality.

The WPS ''Do Not Contact'' provision prohibits contacting persons with pesticides for all situations and without any distance limitation on the proximity of the application. The ''Do Not Contact'' provision is a performance standard that mandates an outcome but does not specify how it is to be achieved. The AEZ requirements are supplemental to the ''Do Not Contact'' requirements (and any label-specific requirements intended to protect against contact) in that they provide a small set of concrete benchmarks intended to help handlers accomplish the no-contact objective. The AEZ, when coupled with the provisions to ensure no contact and other label requirements (which may prescribe nozzle types, droplet sizes, and buffers based on product-specific assessments), is designed to be just one of several mechanisms to protect workers and other persons. EPA has concluded that the 2015 AEZ ground spray criteria are too complex, and in many cases too restrictive, and the ''Do Not Contact'' requirement would be better supplemented by the combination of a simplified AEZ and additional product-specific requirements where needed. Where EPA's product-specific risk assessments result in labeling language that is inconsistent with or exceeds the requirements of the 25-foot AEZ, the handler must comply with the pesticide product labeling. Therefore, EPA has decided to finalize the proposed 25-foot AEZ for all ground applications sprayed from a height greater than 12 inches to serve as the baseline for ground applications when product labels do not provide something more protective and to remove spray quality and spray droplets to make this baseline simple to determine. EPA is finalizing changes to simplify the criteria so applicators can better understand the AEZ requirements and need for the AEZ protections, and how to implement them.

D. Providing an Immediate Family Exemption to the AEZ Requirements

1. *Proposal.* EPA proposed to revise § 170.601 so that owners and applicators would be exempt from the AEZ requirements of § 170.405(a)(2) in regard to members of their immediate families who are inside closed buildings, housing, or shelters on the establishment during pesticide applications. Immediate family, as defined at § 170.305, includes the owner's (or owners') spouse, parents, stepparents, foster parents, father-in-law, mother-in-law, children, stepchildren, foster children, sons-in-law, daughters-in-law, grandparents, grandchildren, brothers, sisters, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and first cousins. ''First cousin'' is defined as the child of a parent's sibling, *i.e.,* the child of an aunt or uncle.

EPA proposed this revision to address unforeseen impacts of the 2015 AEZ requirements in certain situations. Stakeholders raised concerns related to the AEZ requirement in 40 CFR 170.405(a)(2) (requiring that employers must not allow workers/people to remain in the AEZ on the establishment other than properly trained and equipped handlers involved in the application) applying to workers or other persons that are in buildings, housing, or shelters on the establishment. Even when workers or other people are in closed buildings, housing, or shelters that are within the boundaries of the establishment, the employer cannot legally apply the pesticide if those people are within the boundary area of the AEZ—it is a violation of the WPS. There is no choice under the current rule but to remove them from the AEZ before the application can take place, regardless of whether the buildings are enclosed, or the handler can ensure the pesticide will not contact the people. This raised specific concerns for owners of agricultural establishments and their immediate families.

In the case of owners of agricultural establishments and their immediate families, family members cannot stay in their own home within the AEZ during pesticide applications even if the owner and applicator take appropriate steps to ensure family members would not be contacted by pesticide spray or drift. This can be burdensome, for example, when owners are employing EPA-recommended best practices such as those prescribed under the pollinator protection strategy to apply pesticides in the evening and when temperatures are below 50 °F, when pollinators are not as active but immediate family members are more likely to be present. Although EPA acknowledged that there is an exposure risk for owners and immediate family members present within the AEZ during pesticide applications, EPA anticipates that family members would take appropriate steps to protect other family members to ensure they would not be contacted during pesticide applications, and that the AEZ requirement therefore subjects owners of agricultural establishments and their immediate families to unnecessary burdens. Accordingly, EPA proposed to revise 40 CFR 170.601(a) so that owners and applicators would be exempt from the provisions of 40 CFR 170.405(a)(2) regarding members of their immediate families who are inside closed buildings, housing, or shelters on the establishment. This would not impact WPS protections for workers and handlers, because owners and applicators would still have to observe AEZ requirements for non-family member employees on the establishment. Because the proposed exemption was limited to 40 CFR 170.405(a)(2), family members would still be subject to all other AEZ requirements.

2. *Final Rule.* In the final rule, EPA has adopted the proposed change to § 170.601(a)(1), but with several modifications. EPA has narrowed the proposed regulatory language to clarify that these exemptions only apply in regard to immediate family members who remain inside closed buildings, housing, or shelters on the establishment. In addition, EPA has added new regulatory language to §§ 170.601, 170.405(a)(2) and 170.505(b)(1) to make it clear that the immediate family exemption to the AEZ also applies when the handler performing the application is not an owner of the establishment, but only when the handler has been instructed by the owner to proceed with the application near family homes or closed

buildings containing only the owner's immediate family inside.

Upon review of the comments, EPA recognized that expanding the § 170.601(a) immediate family exemption to include § 170.405(a)(2) is not sufficient to accomplish the proposed goal of allowing immediate family members to remain in the home or other shelter within the AEZ during applications. As proposed, the regulatory text of the revised rule would exempt a farm owner of his or her responsibilities as an agricultural employer, but it is not clear that it would also exempt the farm owner from § 170.505(b) when acting as a handler; he or she could still be subject to § 170.505(b) and have to suspend the application until family members are evacuated from the home within the AEZ. Moreover, the proposed regulatory text made no exemption for applications made by handlers other than an establishment owner, so as drafted, there would effectively be no exemption at all. In order to accomplish the stated goals of the proposal, EPA is revising § 170.601(a) to expressly include the AEZ requirements in § 170.505(b) as well as those in § 170.405(a)(2) in the immediate family exemption, and to extend that exemption to include handlers in certain circumstances. The AEZ requirements would still apply when owners and immediate family members are in the AEZ and outside of closed buildings, housing, or shelters.

As revised in this final rule, § 170.601(a)(1) provides that the owner of the establishment may permit handlers to perform applications near closed buildings, housing, or shelters where the owners or their immediate family members are present, provided that the owner has expressly instructed the handlers that only the owners or their immediate family members remain inside the closed shelters, and that the application should proceed despite their presence in the closed shelters. Without these expressed instructions from the owner, handlers will be required to suspend the application if the owner or their immediate family members are inside closed structures within an AEZ.

EPA has also added references to this § 170.601(a)(1)(vi) exemption in §§ 170.405(a)(2) and 170.505(b)(1) for clarity.

3. *Comments and Responses.* a. *Comments.* SLAs, AAPCO, NASDA, and several agricultural stakeholder groups and farm bureaus expressed their general support for adding the AEZ requirements to the 40 CFR 170.601 immediate family exception. These commenters state that allowing immediate family members to remain inside closed buildings inside the AEZ boundaries during pesticide applications would reduce the burden to applicators who are on their own family farm. These commenters agreed with EPA's proposal that immediate family members, including children, would be as safe as they are now without the exemption because applicators would protect their own family members. Furthermore, the revision would reduce the considerable burden on farmers and their family members and create more flexibility while not compromising safety.

Conversely, several farmworker advocacy commenters and individuals in the general public expressed concerns over EPA's proposal to exempt farm owners and their immediate family members. Among the comments received, commenters stated that it is in everyone's best interest to leave the AEZ during a pesticide application, so requiring everyone to do so, including owners' family members, should not generate ''undue burden,'' and that the applicator would not be able to ensure that only the owners' family members are inside particular buildings. Commenters also suggested that the proposed revision of the AEZ would put a real burden on rural communities by reducing protection to family members who might not necessarily understand the risk of exposure to which they are subjecting themselves. Lastly, they maintain that the risk to public health outweighs any benefits.

In addition to these comments, one commenter stated that the Agency made no effort to explain why its rationale would justify exempting family members when the family members are outdoors but within an AEZ, and that, at best, it would justify an exemption only when family members are in a closed building. Second, the commenter suggested that the Agency did not explain how its rationale aligns with an earlier justification to exempt family members from certain WPS requirements. The commenter stated that when the Agency included provisions in the 1992 WPS to exempt family members from certain requirements, EPA explained that it was reasonable to expect owners of agricultural establishments to take all steps necessary to protect their own family members, and at the same time the exemption gave owners flexibility on how to provide those protections. So, for example, the WPS does not require owners to give family members formal pesticide safety training or to keep records documenting that the family members had been trained. The commenter indicated that the Agency reasoned that such training could and would happen informally (and perhaps better) over time. As the commenter notes, the protection provided by the AEZ provisions, however, is not like training; it cannot be provided informally, or even adequately, over time, and that the AEZ provision is only meaningful if the applicator suspends spraying at the moment when someone is too near the application equipment. They believe that exempting family members will only encourage applicators to be less careful in complying with the ''Do Not Contact'' provision.

One commenter suggested that while the proposed exemption for family members is unjustifiably overbroad, EPA's rationale does raise a valid concern. The commenter thought that it seemed reasonable that the WPS regulation should not require suspension of an application every time the application equipment passes near a closed, occupied building, but that there was a serious practical issue with the Agency's proposed exemption of family members. To the extent that it is designed to address circumstances in which an immediate family member could be inside of a building within an AEZ, it would be practically impossible for an applicator to know whether any people were present and whether the only people in the building were members of the immediate family. Under the proposal, in order to comply, the applicator would most likely need to suspend application in order to check the building. Thus, the commenter believes that the proposed change probably would not provide any real relief from the alleged burden. Moreover, another practical consideration is that an applicator who is not the owner of the agricultural establishment might well not know the relationship of the person in the AEZ (either within a building or not) to the owner.

b. *EPA Response.* The proposed rule regulatory text would exempt farm owners from providing the protections of 40 CFR 170.405(a)(2) to themselves or their immediate family members. The proposed language would exempt them from all requirements of the AEZ whether family members are inside or outside of enclosed structures as one of the commenters noted. EPA agrees with the commenter that the proposed language was overly broad and acknowledges that this was not the intention of the proposed exemption. As stated in the preamble to the proposal, EPA intended the exemption to apply only to family members inside closed buildings, housing, or shelters to reduce

the burdens of having to leave their homes during a pesticide application.

EPA believes this approach is consistent with the 1992 WPS rationale cited by one of the commenters. EPA expects owners of agricultural establishments to take all steps necessary to protect their own immediate family members, and the final rule gives owners flexibility to provide those protections by sheltering immediate family members in enclosed structures within the AEZ.

Accordingly, EPA is changing the regulatory text at 40 CFR 170.601(a)(1)(vi) to state that the exemption only applies when immediate family members of farm owners remain inside closed buildings, housing, or shelters on the establishment. This change clarifies that the AEZ requirements fully apply to immediate family members when they are outdoors, and that the exemption only applies when they shelter-in-place.

While reviewing the comments, EPA identified an ambiguity in the proposed rule regarding whether the proposed family exemption is broad enough to allow handlers who are not an owner of the establishment to perform the application while owners and their immediate family members to remain inside closed buildings, houses, or structures. This is, in part, because the existing 40 CFR 170.601(a)(1) only applies to owners, and while it could be construed to apply to owners when performing the handler activities, it would not extend to other handlers who have been hired by the owner to perform those duties. However, EPA's intent was to allow the owner, who generally has awareness of, and control over, the movement of immediate family members on the establishment, to instruct an applicator or handler to perform an application while the owners or their immediate family members remained inside closed structures within the AEZ. The final rule reflects this intent and will relieve owners and their immediate families of the burden of vacating the building when the owner judges it unnecessary. Without the express instruction from the owner to proceed with an application despite his or her family's presence in the closed structure, the final rule requires handlers to comply with the suspension requirements at § 170.505 and not proceed with the application until the owner's immediate family vacates the AEZ.

Some of the commenters understood the proposal to mean that applicators or handlers who are not owners of the agricultural establishment would need to comply with the AEZ requirements and suspend the application in all situations until they could confirm the structure was clear as required under 40 CFR 170.505, while others viewed EPA's proposal to apply more broadly (*i.e.,* family members could stay inside while a hired handler performs the application). The Agency recognizes that as proposed, § 170.601(a)(1)(iv) might only apply to owners in their role as agricultural employers; it would not necessarily exempt the owner or any other person from the handler requirements of § 170.505(b), making the proposed exemption unusable. This would not be consistent with EPA's intent, or the understanding of at least some commenters.

Accordingly, EPA has revised the regulatory text at § 170.601 to make clear that applications conducted by other handlers can proceed when owners or their immediate family members remain inside closed buildings, housing, and structures, provided that the owner has expressly instructed the handler that only the owner and/or their immediate family members remain inside the closed building and that the application can proceed despite the owner and their immediate family members' presence inside the closed building. Handlers will have to receive this information from the owner of the establishment prior to application and cannot assume that only the owner's family are inside without that assurance. The rule does not require that the instruction be provided to the handler in writing, as that could be unnecessarily burdensome in many cases. However, insisting on a written instruction may provide a handler relief from an enforcement action if the owner's representation proves to be incorrect.

EPA assumes that owners will take into account the risks to their immediate family members before instructing a handler to proceed with an application. This approach gives owners flexibility on how to provide appropriate protections when their family remains in an enclosed structure within the AEZ while reducing burdens during applications. This revision to the regulatory text will not lessen protections for workers or other persons, as this exemption to the AEZ requirement does not apply if a person present in the AEZ is not a member of the owner's immediate family.

EPA, however, disagrees with the assertion that the exemption would result in applicators being less careful in complying with the ''Do Not Contact'' provision. The farm owner or applicator must still suspend application if anyone other than the owners or their immediate family members are within the AEZ, including inside enclosed structures within an AEZ. It is reasonable to believe that owners will warn their immediate family of a pesticide application in advance and instruct them that no one, other than their immediate family members, may be inside during the application. Moreover, the agricultural employer's responsibility under 40 CFR 170.405(a)(2) to not allow or direct any worker or other person within the AEZ other than appropriately trained and equipped handlers involved in the application requires the farm owner or agricultural employer to ensure that no one outside of the immediate family will be permitted in the house within an AEZ until after the application they are performing is complete or the application equipment has moved on.

E. Recommendations To Develop State Equivalency Provisions for the AEZ

1. *Comments.* One SLA, one state association representing SLAs, and one agricultural stakeholder association requested that EPA establish a mechanism to review and accept (when warranted) AEZ equivalency plans or provisions submitted by SLAs, territories, and tribes. The commenters all indicated that at least one state ''shelter-in-place'' provision has protections in addition to those specified in the federal AEZ. Commenters indicated that the state law was developed after a long, inclusive, and transparent rulemaking process with farm worker advocacy groups and grower groups. This state law provides clarifications and revisions to the federal requirements and provides protections in addition to those in the federal AEZ.

2. *EPA Response.* In the early development of the AEZ proposal, EPA had considered addressing state equivalency plans and a mechanism to review and accept those plans. EPA's preference at the time was to address state equivalency plans with the whole WPS in mind. However, under PRIA 4 (Pub. L. 116–8; March 8, 2019), EPA is required to carry out the 2015 WPS rule and is not permitted to propose or finalize revisions to the WPS other than to the AEZ prior to October 1, 2021. As a result of this statutory limitation, EPA has determined that EPA's preferred path to revising the state equivalency request language at 40 CFR 170.609 would be outside the scope of what is permitted under statute since the preferred approach would not be limited to the AEZ requirements. While EPA is currently limited by PRIA 4 to make this change, EPA may be able to

reexamine this recommendation starting in October 2021.

F. Recommendation To Add an AEZ ''Shelter-in-Place'' Provision for Workers and Other Persons

1. *Comments.* In addition to the requests to establish mechanisms for state equivalency plans, two agricultural stakeholders and one SLA requested that EPA expand the exemption offered to agricultural owners and their immediate families to include workers and others who remain in an enclosed structure.

Another commenter argued that the EPA exemption allowing agricultural owners and their immediate families to remain inside a closed building within an AEZ would not need to be as complicated as suggested in the proposal. The commenter suggested that instead of naming different types of buildings, the criteria could be that application could continue as long as all visible openings by which the pesticide spray could enter the building—*e.g.,* doors and windows—appear closed, and that unnamed ''variables'' are irrelevant. The commenter stated that what should matter from a safety perspective is whether the spray is likely to contact someone within the AEZ, not the relationship between the owner of the agricultural establishment and the person in the AEZ. They argue this suggestion would eliminate the arbitrary distinction in the proposal that affords different protections to people in the owner's immediate family and those who are not. Further, the commenter argues that an applicator could determine more quickly and easily whether he or she needed to suspend application simply by looking at the exterior of the building, rather than entering the building.

2. *EPA Response.* EPA disagrees with the commenters' recommendations to extend the exemption to remain in the AEZ to anyone provided they remain in an enclosed structure (*i.e.,* ''shelter-in-place''). EPA had considered addressing this issue through development of an exception to the AEZ requirement that would consider and identify appropriate conditions that would allow people to remain in a building or structure in the AEZ. EPA believes that conditions vary too much for EPA to establish a generally applicable ''shelter-in-place'' provision, and would be better suited to narrowly-targeted ''shelter-in-place'' provisions developed by SLAs based upon the circumstances and need within their jurisdictions. However, as indicated previously, EPA's preferred path for developing state equivalency mechanisms and revising the language under 40 CFR 170.609 is currently limited by PRIA 4. EPA may reexamine this issue again if and when EPA has the authority to reconsider other aspects of the WPS.

G. Other Recommendations and Revisions

1. *Definitions.* a. *Application Exclusion Zone.*

i. *Current rule and proposal.* Under 40 CFR 170.305, the application exclusion zone means ''the area surrounding the application equipment that must be free of all persons other than appropriately trained and equipped handlers during pesticide applications.''

Under the proposed rule, EPA proposed to change the definition to mean ''the area surrounding the application equipment from which persons generally must be excluded during pesticide applications.''

The proposed change was intended to reflect the various proposed revisions limiting the AEZ to within the boundaries of the establishment and addressing easements within establishment boundaries and allowing an owner's immediate family to remain in an enclosed building within an AEZ during an application.

ii. *Comments and Responses.*

Comments. One commenter recommended that EPA revise the definition of AEZ to mean ''the area surrounding the point(s) of pesticide discharge from the application equipment that must be free of all persons during pesticide applications, other than those persons noted under 40 CFR 170.405(a)(2) and 170.601(a)(1).'' The commenter stated that definition of the AEZ as proposed was unclear and even EPA's explanation of it was inconsistent, which will make compliance and enforcement difficult. For example, the April 2016 and February 2018 guidances both show graphics in which the AEZ is measured from the entirety of the pesticide application equipment for a ground sprayer. However, the February 2018 adds a graphic for an aerial spray in which the AEZ is measured from the points of pesticide discharge for an aerial sprayer. The two graphics are side by side in the February 2018 guidance.

In addition to this revised definition, the commenter recommended that to be consistent with this recommended definition, similar language should be added at 40 CFR 170.405(a)(1)(i) and 170.405(a)(1)(ii) to be clear that the AEZ distance is determined from the point(s) of pesticide discharge from the application equipment.

EPA Response. EPA agrees with the commenter and revised the final regulatory text when discussing measuring the AEZ from the points of pesticide discharge to ''the area surrounding the point(s) of pesticide discharge from the application equipment that must generally be free of all persons during pesticide applications;'' this recommended change is a commonsense revision to the definition and regulatory text that helps to improve the clarity of the rule and is consistent with EPA's past outreach on the AEZ requirements. EPA did not include as part of the definition ''other than those persons noted under § 170.405(a)(2) and § 170.601(a)(1).'' The limits to the AEZ boundaries, exceptions, and exemptions are addressed through the responsibilities of the agricultural employer or handler during applications within an AEZ, and regulatory text is found at §§ 170.405(a)(2), 170.505(b) and 170.601(a)(1), respectively. However, EPA has revised the definition to clarify that exclusion is the general rule, to which there are exceptions.

b. *Easements.* i. *Current rule and proposal.* Under the current rule, there is no definition or exception associated with easements. EPA proposed to allow applications to be made or resume while persons not employed by the establishment are present on easements that may exist within the boundaries of agricultural establishments, because, depending on the terms of the easement, the owner or agricultural employer may be unable to control the movement of people (*e.g.,* utility workers) within an easement. The proposal to address people not employed by the establishment who are in an area subject to an easement (*e.g.,* utility workers) provides regulatory relief to handlers and agricultural employers and may prevent disruptions to pesticide applications. Despite this proposed change, EPA did not define the meaning of an ''easement.''

ii. *Comment and Response.*

Comment. One commenter stated that adding the exception to the AEZ beyond the boundary of the establishment where handlers do not have the ability to control the movement of people off the establishment or within easements allows a more reasonable approach on shared property. However, the commenter felt that without a definition of ''easement'', the interpretation of such is left up to each state or historical elucidation. The commenter stated that ''easement'' is commonly defined as ''a nonpossessory right to use and/or enter onto the real property of another without possessing it,'' which allows some relief of the AEZ requirements along utility or roadway rights-of-ways

that are clearly an ''easement.'' However, there is the challenge of unintentional consequences if the term is not defined on properties such as driveways, access roads, etc. A definition of ''easement'' should be added to clarify exactly how EPA is defining ''easement'' to ensure consistency in the interpretation of the rule.

EPA Response. EPA's intention for the easement exception was to recognize that some persons may have a legal right to be on parts of an agricultural establishment independent of the agricultural employer's control, and for their presence not to be an insurmountable obstacle to pesticide application provided the pesticide could be applied without contacting such persons. Whether a person has such a legal right is a matter of state law, so it seems inappropriate for EPA to try to impose a national definition of ''easement'' in the WPS. EPA agrees that the commenter's definition of ''easement'' is a common definition; however, EPA does not think that including it in the rule would substantially aid in interpretation or implementation.

2. *Making the AEZ Based on Wind Direction.* a. *Current rule and proposal.* Under the current rule, for aerial, air blast, fumigations, mists, and foggers, as well as ground applications with fine or smaller droplet sizes (less than 294 microns VMD), the AEZ area encompasses 100 feet from the application equipment in all directions. For ground applications with medium or larger droplet sizes (VMD greater than 294 microns) and a spray height of more than 12 inches from the ground, the area encompasses 25 feet from the application equipment in all directions. For all other applications, there is no AEZ.

In the proposed rule, EPA proposed to limit the criteria for 100-foot AEZ distances for outdoor production to pesticide applications made by any of the following methods: (1) Aerially; (2) by air blast or air-propelled applications; or (3) as a fumigant, smoke, mist, or fog. Additionally, the proposal set to establish a 25-foot AEZ for all sprayed applications made from a height greater than 12 inches from the soil surface or planting medium, and no longer differentiate between sprayed applications based on the droplet size of 294 microns or other factors for setting different AEZ distances for outdoor production.

b. *Comments and Responses.*

i. *Comments.* Three commenters recommended improving implementation of the AEZ without compromising the safety of workers by making the AEZ based on wind direction. These commenters suggest that the AEZ should only apply to the downwind side of the applicator as drift only moves downwind. They argued that, for example, aerial applicators have the tools necessary to provide immediate onsite wind direction measurement so if wind direction does change during the application they can respond immediately. The commenters indicated that the labels for some products are reflective of this concept and offer evidence supporting the concept of buffer zones based on wind direction and believe this same logic should also be applied to the AEZ.

ii. *EPA Response.* EPA disagrees with this recommendation, as it would make the requirements of the AEZ more complex rather than less. This recommendation could also lead to workers being placed too close to applications based on wind direction, resulting in potential pesticide exposures with sudden shifts in wind direction during application. By maintaining an omnidirectional AEZ (*i.e.,* an AEZ around the application equipment in all directions), the AEZ will provide a margin of security against changes in wind direction for those on the establishment who may be near the ongoing application but are not properly trained and equipped handlers participating in the application.

3. *Recommendation to Reduce Redundancy.* a. *Comment.* One commenter suggested the following change presented in the proposal to make the final rule text less redundant:

- In 40 CFR 170.505(b)(1), remove '', other than an appropriately trained and equipped handler involved in the application,'' because this language was repeated in the proposed text at 40 CFR 170.505(b)(1)(i).

b. *EPA Response.* EPA agrees with the commenter and has removed, ''other than an appropriately trained and equipped hander involved in the application'' from the final regulatory text in 40 CFR 170.505(b)(1) since it is repeated in 40 CFR 170.505(b)(1)(i).

Additionally, while not explicitly mentioned in any public comment, EPA has made a similar edit from the proposed to final rule to remove the redundant text, ''. . . within the boundaries of the agricultural establishment . . . ,'' in 40 CFR 170.501(3)(xi) since that clarification is previously stated in the sentence.

VI. Severability

The Agency intends that the provisions of this rule be severable. In the event that any individual provision or part of this rule is invalidated, the Agency intends that this would not render the entire rule invalid, and that any individual provisions that can continue to operate will be left in place.

VII. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Pesticides; Agricultural Worker Protection Standard Revisions; Final Rule. **Federal Register**. 80 FR 67496, November 2, 2015 (FRL–9931–81).
2. EPA. Pesticides; Agricultural Worker Protection Standard; Revision of the Application Exclusion Zone Requirements; Proposed Rule. **Federal Register**. 84 FR 58666, November 1, 2019 (FRL–9995–47).
3. EPA. Cost Analysis for Revisions to the Application Exclusion Zone in the Worker Protection Standard. 2020.
4. U.S. Senate. S. Rep. No. 92–883 (Part II), 92nd Congress, 2nd Session at 43–46 (1972). U.S. Code Congressional and Administrative News 1972, p. 4063.
5. North Carolina Department of Agriculture and Consumer Services (NCDA&CS). Letter from James W. Burnette, Jr., Director NCDA&CS, to James J. Jones, Assistant Administrator, OCSPP. December 4, 2015.
6. EPA. WPS Guidance on the Application Exclusion Zone. Q&A Fact Sheet on the Worker Protection Standard (WPS) Application Exclusion Zone (AEZ) Requirements. April 14, 2016. Available at *https://www.regulations.gov/document?D=EPA-HQ-OPP-2017-0543-0007.*
7. AAPCO. Letter from Dennis W. Howard, President, to Jack Housenger, Office Director, Office of Pesticide Programs. August 17, 2016. Available online at *https://aapco.files.wordpress.com/2016/11/letter-to-jack-housenger-wps_aez.pdf.*
8. NASDA. Letter from Nathan Bowen, Director, Public Policy, to Administrator Gina McCarthy. November 16, 2016. Available

online at *https://www.nasda.org/letters-comments-testimony/nasda-letter-requesting-extension-for-worker-protection-standard-implementation-timeline.*
9. EPA. Reference List of Public Comments Regarding the Worker Protection Standard Submitted to Docket EPA–HQ–OA–2017–0190. List available at *https://www.regulations.gov/document?D=EPA-HQ-OPP-2017-0543-0005.*
10. EPA. Transcript from PPDC Meeting on May 4, 2017. Available online at *https://www.epa.gov/sites/production/files/2017-07/documents/may-4-2017-ppdc-meeting-transcript.pdf.*
11. EPA. Transcript from PPDC Meeting on November 2, 2017. Available online at *https://www.epa.gov/sites/production/files/2018-01/documents/november-2-2017-ppdc-meeting-transcript.pdf.*
12. EPA. Worker Protection Standard Application Exclusion Zone Requirements: Updated Questions and Answers. February 15, 2018. Available at *https://www.regulations.gov/document?D=EPA-HQ-OPP-2017-0543-0008.*
13. EPA. Pesticides; Agricultural Worker Protection Standard; Revision of the Application Exclusion Zone Requirements; Response to Comments on the Proposed Rule. 2020.
14. EPA, Office of Inspector General, EPA Needs to Evaluate the Impact of the Revised Agricultural Worker Protection Standard on Pesticide Exposure Incidents, Report No. 18–P–0080 (Feb. 15, 2018) (''OIG Report''). Available online at *https://www.epa.gov/sites/production/files/2018-02/documents/_epaoig_20180215-18-p-0080.pdf.*
15. EPA. How to Comply with the 2015 Revised Worker Protection Standard for Agricultural Pesticides: What Owners and Employers Need to Know. 2016.
16. EPA. Inspection Manual: Worker Protection Standard Inspection Manual. 2018.
17. EPA. Economic Analysis of the Agricultural Worker Protection Standard Revisions. September 2015 (RIN 2070–AJ22). Available at *https://www.regulations.gov/document?D=EPA-HQ-OPP-2011-0184-2522.*
18. Association of Farmworker Opportunity Programs (AFOP). *2019 Training Data Report.* AFOP, Farmworker Health & Safety Programs report developed with EPA grant #83597001, Occupational Safety and Health Administration Susan Harwood Training Program Funds grant #SH–05004–SH, and W.K. Kellogg Foundation grant #P3033500. January 2020.
19. Felsot *et al.* Agrochemical Spray Drift; Assessment and Mitigation—A Review, 46 J. Envtl. Sci. Health Part B 1. 2010. Provided in comment by Earthjustice *et al.*
20. Kasner *et al.,* Spray Drift from a Conventional Axial Fan Airblast Sprayer in a Modern Orchard Work Environment, 62 Annals of Work Exposures and Health 1134. 2018. Provided in comment by Earthjustice *et al.*

VIII. FIFRA Review Requirements

Under FIFRA section 25, EPA has submitted a draft of the final rule to the Secretary of the Department of Agriculture (USDA), the FIFRA Scientific Advisory Panel (SAP), and the appropriate Congressional Committees. USDA reviewed the draft final rule during the interagency review mentioned in Unit IX.A. and waived further review on October 7, 2020. Since there are no science issues warranting review, the FIFRA SAP waived a detailed review on October 12, 2020.

IX. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Any changes made in response to OMB recommendations have been documented in the docket. EPA prepared a cost analysis associated with this action, which is briefly summarized in Unit I.E. and is available in the docket (Ref. 3).

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is a deregulatory action as specified in Executive Order 13771 (82 FR 9339, February 3, 2017). The EPA cost analysis associated with this action is briefly summarized in Unit I.E. and is available in the docket (Ref. 3).

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA, 44 U.S.C. 3501 *et seq.* OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2070–0190. This rule does not impose or modify any information collection burdens because the AEZ requirements are not associated with any information collection activities that require approval under the PRA.

D. 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, 5 U.S.C. 601 *et seq.* In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves burden or has no net burden on the small entities subject to the rule. The changes to the AEZ requirements in this rule will reduce the impacts on all entities subject to the rule, so there are no significant impacts to any small entities. EPA has therefore concluded that this action will relieve regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The rule requirements will primarily affect agricultural employers and commercial pesticide handler employers. This action is also expected to be a burden-reducing action because removing the requirements should reduce the complexity of arranging and conducting a pesticide application. The cost analysis associated with this action is briefly summarized in Unit I.E. and is available in the docket (Ref. 3). As such, the requirements of sections 202, 203, 204, or 205 of UMRA, 2 U.S.C. 1531–1538, do not apply to this action.

F. Executive Order 13132: Federalism

This action does not have federalism implications as defined in Executive Order 13132 (64 FR 43255, August 10, 1999), because 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.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not have any effect on tribal governments, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. There are no costs to Tribes associated with these changes because the WPS is implemented through the pesticide label, so changes to the regulation do not impose any new obligations on the part of Tribes. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This determination is discussed in more detail in Unit IV.F.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards that would require Agency consideration under NTTAA section 12(d), 15 U.S.C. 272.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). A more detailed discussion of this determination is provided in Unit IV.F.

L. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801–808, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 170

Environmental protection, agricultural worker, employer, farms, forests, greenhouses, nurseries, pesticides, pesticide handler, worker protection standard.

Andrew Wheeler,

Administrator.

Therefore, for the reasons set forth in the preamble, 40 CFR chapter I, subchapter R is amended as follows:

PART 170—[AMENDED]

■ 1. The authority citation for part 170 continues to read:

Authority: 7 U.S.C. 136–136w.

§ 170.305 Definitions.

■ 2. Amend § 170.305 by revising the definition of *Application exclusion zone* to read as follows:

* * * * *

Application exclusion zone means the area surrounding the point(s) of pesticide discharge from the application equipment that must generally be free of all persons during pesticide applications.

* * * * *

■ 3. Amend § 170.405 by revising paragraphs (a)(1)(i) and (ii) and (a)(2) to read as follows:

§ 170.405 Entry restrictions associated with pesticide applications.

* * * * *

(a) * * *

(1) * * *

(i) The application exclusion zone is the area that extends 100 feet horizontally from the point(s) of pesticide discharge from the application equipment in all directions during application when the pesticide is applied by any of the following methods:

(A) Aerially.

(B) Air blast or air-propelled applications.

(C) As a fumigant, smoke, mist, or fog.

(ii) The application exclusion zone is the area that extends 25 feet horizontally from the point(s) of pesticide discharge from the application equipment in all directions during application when the pesticide is sprayed from a height of greater than 12 inches from the soil surface or planting medium and not as in paragraph (a)(1)(i) of this section.

* * * * *

(2) During any outdoor production pesticide application, the agricultural employer must not allow or direct any worker or other person to enter or to remain in the treated area or an application exclusion zone that is within the boundaries of the establishment until the application is complete, except for:

(i) Appropriately trained and equipped handlers involved in the application, and

(ii) Persons not employed by the establishment in an area subject to an easement that prevents the agricultural employer from temporarily excluding those persons from that area.

(iii) Owners of the agricultural establishment and their immediate family members who remain inside closed buildings, housing, or shelters on the establishment under the conditions specified in § 170.601(a)(1)(vi).

* * * * *

■ 4. Amend § 170.501 by revising paragraph (c)(3)(xi) to read as follows:

§ 170.501 Training requirements for handlers.

* * * * *

(c) * * *

(3) * * *

(xi) Handlers must suspend a pesticide application if workers or other persons are in the application exclusion zone within the boundaries of the agricultural establishment and must not resume the application while workers or other persons remain in the application exclusion zone, except for appropriately trained and equipped handlers involved in the application, persons not employed by the establishment in an area subject to an easement that prevents the agricultural employer from temporarily excluding those persons from that area, and the owner(s) of the agricultural establishment and members of their immediate families who remain inside closed buildings, housing, or shelters on the establishment, provided that the handlers have been expressly instructed by the owner(s) of the agricultural establishment that only immediate family members remain inside those closed buildings, housing, or shelters and that the application should proceed despite the presence of the owner(s) or their immediate family members inside those closed buildings, housing, or shelters.

* * * * *

■ 5. Amend § 170.505 by revising paragraph (b) to read as follows:

§ 170.505 Requirements during applications to protect handlers, workers, and other persons.

* * * * *

(b) *Suspending applications.* (1) Any handler performing a pesticide application must immediately suspend the pesticide application if any worker or other person is in an application exclusion zone described in § 170.405(a)(1) that is within the boundaries of the agricultural establishment or the area specified in column B of the Table in § 170.405(b)(4), except for:

(i) Appropriately trained and equipped handlers involved in the application,

(ii) Persons not employed by the establishment in an area subject to an easement that prevents the agricultural employer from temporarily excluding those persons from that area, and

(iii) The owner(s) of the agricultural establishment and members of their immediate families who remain inside closed buildings, housing, or shelters on the establishment, provided that the handlers have been expressly instructed by the owner(s) of the agricultural establishment that only immediate family members remain inside those closed buildings, housing, or shelters and that the application should proceed despite the presence of the owner(s) or their immediate family members inside those closed buildings, housing, or shelters.

(2) A handler must not resume a suspended pesticide application while any workers or other persons remain in an application exclusion zone described in § 170.405(a)(1) that is within the boundaries of the agricultural establishment or the area specified in column B of the Table in § 170.405(b)(4), except for:

(i) Appropriately trained and equipped handlers involved in the application,

(ii) Persons not employed by the establishment in an area subject to an easement that prevents the agricultural employer from temporarily excluding those persons from that area, and

(iii) The owner(s) of the agricultural establishment and members of their immediate families who remain inside closed buildings, housing, or shelters on the establishment, provided that the handlers have been expressly instructed by the owner(s) of the agricultural establishment that only immediate family members remain inside those closed buildings, housing, or shelters and that the application should proceed despite the presence of the owner(s) or their immediate family members inside those closed buildings, housing, or shelters.

* * * * *

■ 6. Amend § 170.601 by revising paragraph (a)(1) to read as follows:

§ 170.601 Exemptions.

(a) * * *

(1) On any agricultural establishment where a majority of the establishment is owned by one or more members of the same immediate family, the owner(s) of the establishment (and, where specified below, certain handlers) are not required to provide the protections of the following provisions to themselves or members of their immediate family when they are performing handling activities or tasks related to the production of agricultural plants that would otherwise be covered by this part on their own agricultural establishment.

(i) Section 170.309(c).

(ii) Section 170.309(f) through (j).

(iii) Section 170.311.

(iv) Section 170.401.

(v) Section 170.403.

(vi) Sections 170.405(a)(2) and 170.505(b), but only in regard to owner(s) of the establishment and their immediate family members who remain inside closed buildings, housing, or shelters on the establishment. This exception also applies to handlers (regardless of whether they are immediate family members) who have been expressly instructed by the owner(s) of the establishment that:

(A) Only the owner(s) or their immediate family members remain inside the closed building, housing, or shelter on the establishment, and

(B) The application should proceed despite the presence of the owner(s) or their immediate family members remaining inside the closed buildings, housing, or shelters on the establishment.

(vii) Section 170.409.

(viii) Sections 170.411 and 170.509.

(ix) Section 170.501.

(x) Section 170.503.

(xi) Section 170.505(c) and (d).

(xii) Section 170.507(c) through (e).

(xiii) Section 170.605(a) through (c), and (e) through (j).

* * * * *

[FR Doc. 2020–23411 Filed 10–29–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Parts 59 and 64

[Docket ID FEMA–2019–0016]

RIN 1660–AA92

Revisions to Publication Requirements for Community Eligibility Status Information Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This final rule modernizes regulations regarding publication requirements of community eligibility status information under the National Flood Insurance Program (NFIP). FEMA is replacing outdated regulations that require publication of community loss of eligibility notices in the **Federal Register** with a requirement that FEMA publish this information on the internet or by another comparable method. FEMA is also replacing its requirement that the agency maintain a list of communities eligible for flood insurance in the Code of Federal Regulations with a requirement that FEMA publish this list on the internet or by another comparable method.

DATES: This rule is effective December 2, 2020.

ADDRESSES: The docket for this rulemaking is available for inspection using the Federal eRulemaking Portal at *http://www.regulations.gov* and can be viewed by following that website's instructions.

FOR FURTHER INFORMATION CONTACT: Adrienne Sheldon, Supervisory Emergency Management Specialist, Floodplain Management Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, *adriennel.sheldon@fema.dhs.gov,* (202) 674–1087.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion of the Rule

The National Flood Insurance Act of 1968, as amended (NFIA), Title 42 of the United States Code (U.S.C.) 4001 *et seq.,* authorizes the Administrator of FEMA to establish and carry out the National Flood Insurance Program (NFIP) to enable interested persons to purchase insurance against loss resulting from

physical damage to or loss of property arising from floods in the United States.[1] Under the NFIA, FEMA may only grant flood insurance to properties within communities that have adopted and that enforce adequate land use and control measures that regulate floodplains.[2] The statute authorizes FEMA to develop land use criteria consistent with requirements laid out in the NFIA and to encourage the adoption and enforcement of State and local measures implementing those criteria.[3] FEMA floodplain management regulations governing community eligibility for participation in the NFIP are located at 44 CFR parts 59, 60, and 64.

FEMA regulations at 44 CFR 60.3, 60.4, and 60.5 contain land use measures for floodplain management. If a community fails to demonstrate to FEMA that it meets these requirements, or decided to withdraw from the NFIP, FEMA may initiate probation, suspension, or withdrawal procedures as described in 44 CFR 59.24. In the case of a loss of eligibility, for instance if a community is suspended for failing to enforce its floodplain regulations, FEMA notifies the community of the upcoming loss directly and gives the community an opportunity to correct the deficiency that triggered the procedures. In cases of loss of eligibility, FEMA publishes a notice of the upcoming loss of eligibility in the **Federal Register** as required by 44 CFR 59.24.

NFIP regulations at 44 CFR 64.6 provide a list of communities where the sale of flood insurance under the NFIP is authorized as set forth in Subpart B, ''Eligibility Requirements,'' to part 59 of the regulations. Due to the large number of communities eligible for flood insurance and the relative frequency to changes to community eligibility, maintaining a list of communities in FEMA's regulations is not feasible; however, FEMA meets this requirement by publishing the updated list of communities through periodic final rules in the **Federal Register**. FEMA last published an updated list in the **Federal Register** in August 2006.

On February 12, 2020, FEMA published a Notice of Proposed Rulemaking (NPRM) (85 FR 7902) proposing to make two changes to its regulations regarding publication requirements of community eligibility status information under the NFIP. The NPRM proposed to replace outdated regulations that require publication of community loss of eligibility notices in the **Federal Register** with a requirement that FEMA publish the information on the internet or other comparable method. The NPRM also proposed to replace the requirement that the agency maintain a list of communities eligible for flood insurance in the Code of Federal Regulations (CFR) with a requirement that FEMA publish this list on the internet or other comparable method. The NPRM explained FEMA would transition to the new form of publication by first publishing brief notices monthly in the **Federal Register** for six months after the effective date of the final rule.

The NPRM solicited public comment on these proposed changes. FEMA received six comments related to the rulemaking. In this final rule, FEMA adopts the changes it proposed in the NPRM, with clarifications in consideration of the related comments. FEMA describes these changes below.

II. Summary and Discussion of Public Comments

Of the six comments FEMA received related to this rulemaking, five were generally in support of the proposed changes in the NPRM and one was neutral. Three members of the public [FEMA–2019–0016–0003, FEMA–2019–1660–0007, and FEMA–2019–0016–0002] expressed their support for the rule generally. One member of the public [FEMA–2019–0016–0003] stated she was supportive of the move to an online notification process and also of the proposed transition period in the NPRM while another member of the public [FEMA–2019–1660–0007] expressed support for the changes and noted that the NRPM aligned with OMB M–19–21 regarding a transition to electronic records and other such Federal Government initiatives. A third member of the public [FEMA–2019–0016–0002] expressed general support for the changes. The Association of State Floodplain Managers (ASFPM) [FEMA–2016–0016–0006] expressed support for the changes, as did the Massachusetts Department of Conservation and Recreation [FEMA–2019–1600–0004].

A. The Community Status Book (CSB)

Three commenters provided feedback on the use of the CSB. One anonymous commenter [FEMA–2019–0016–0005] stated a need to include communities that are not mapped in a Special Flood Hazard Area (SFHA) and not participating in the NFIP in the CSB. The commenter opined that the absence of these communities from the list of communities not participating in the NFIP created confusion for everyday users and required them to reach out to additional resources which undermines the cost savings proposed in the rule. FEMA respectfully disagrees with the commenter. The statute requires FEMA to develop minimum floodplain management criteria to ''(1) constrict the development of land which is exposed to flood damage where appropriate, (2) guide the development of proposed construction away from locations which are threatened by flood hazards, (3) assist in reducing damage caused by floods, and (4) otherwise improve the long-range land management and use of flood-prone areas.'' [4] FEMA is required to focus NFIP floodplain management efforts on communities with flood-prone or special flood hazard areas. Consistent with the statutory requirement, the CSB provides a list of those communities participating in the NFIP and those communities not participating in the NFIP when those communities are in a currently mapped flood risk area. Some communities that do not have special flood hazard areas may still participate in the NFIP. The statutory language allows any state or area (or subdivision thereof) to participate if they have expressed an interest in participating and have adopted the required land use and control measures ''consistent with the comprehensive criteria for land management and use'' required by the statute and regulatory framework.[5] Such participation is voluntary and those communities are captured in the CSB as participating communities. It would be impractical and inappropriate for FEMA to include communities that are not in special flood hazard areas that are not participating in the NFIP program in the CSB. Including those communities in the CSB would not be consistent with its purpose—to provide the status of those communities participating in the NFIP. ASFPM [FEMA–2019–0016–0006] requested that FEMA develop a second tool to compare to the CSB to determine which communities are eligible, providing a mechanism for users to find communities not otherwise found in the CSB. As explained above, if a community is eligible and participating, the community is listed as a participating community in the CSB. If the community is suspended from participating in the NFIP, that community is also listed in the CSB as a community not participating in the NFIP along with other communities that contain identified flood hazard areas that have either withdrawn from or have not yet participated in the NFIP. The NFIP is a voluntary program. FEMA

[1] See 42 U.S.C. 4011(a).

[2] See 42 U.S.C. 4022(a)(1).

[3] See 42 U.S.C. 4102(c).

[4] 42 U.S.C. 4102.

[5] 42 U.S.C. 4012.

would not have knowledge of those communities that do not contain special flood hazard areas and would otherwise be eligible for the program, which requires that they have land use authority, unless those communities apply for the NFIP. Finally, a member of the public [FEMA–2019–0016–0002] suggested that FEMA make the CSB easy to search and access if the rule is to be finalized. FEMA appreciates the comment and will add instructions to the main CSB page on *www.fema.gov* on how to search the CSB.

B. Outreach

ASFPM also requested that FEMA develop and implement an outreach plan to message changes to the publication process and improve awareness of the CSB. The commenter recommended FEMA coordinate with state and local partners on this outreach effort, to update printed and online materials regarding process, and to provide accommodations for those that cannot access information online. As explained in the NPRM, FEMA will continue to publish notices in the **Federal Register** for six months after the effective date of this rule to notify communities of their NFIP status to allow communities to adjust to the changed process as part of the ongoing outreach efforts. The notices will contain information on how to access community status information so that the public will become familiar with the new process. Additionally, FEMA will utilize *www.fema.gov* to provide notifications to communities of their status with information on how individuals can check their community status during and after the transition period. In the required notification letters FEMA sends to impacted communities notifying them of potential suspensions 90 days and 30 days prior to final suspension, FEMA will provide information on how the notification process will transition to the CSB and *www.fema.gov* respectively. The agency will also ensure outreach to notify other stakeholders of these changes through webinars, printed materials, and other information posted on *www.fema.gov* for flood insurance agents and the public. Individuals without internet access will be able to contact their local floodplain management official and/or State NFIP Coordinating Office directly for assistance.

Additionally, the Massachusetts Department of Conservation and Recreation [FEMA–2019–1600–0004] commented that FEMA must continue to notify state NFIP coordinating offices in a timely manner of communities which have become ineligible to participate in the program. FEMA intends to continue the current practice of notifying state coordinators of community suspensions and this final rule will not impact that practice.

C. Other Methods of Notice

One member of the public [FEMA–2019–1660–0003] suggested broadcasting community status information through TV commercials, social media, and/or billboards in the impacted community to raise awareness. FEMA appreciates the commenter's desire to ensure stakeholders are notified of community status changes and the agency's goal is to ensure the public continues to have the most current community status information available. Some of the suggestions would result in additional costs and would not necessarily result in sufficient or immediate access to the information that the final rule changes provide. Additionally, the commenter's suggestion to utilize social media strategies to educate the public on the new process and of suspensions, such as using Twitter and other social media platforms is not an appropriate use of FEMA's social media tools. Notices of NFIP community status are routine and not suited to social media platforms that are more focused on communicating materials regarding the Agency's mission, including disaster preparedness, mitigation, and response and recovery to stakeholders. FEMA will provide this notice to the public by publishing links to *www.fema.gov* information on community suspensions as proposed.

Finally, another member of the public [FEMA–2019–1660–0007] recommended a major revision to the agency's website. The comment noted that the current *www.fema.gov* had far too many topics in the navigation bar, which were not in any logical order and were overwhelming to the user. The commenter requested a more user-friendly experience when using FEMA's website and more search function versatility. FEMA appreciates the comment. FEMA recently completed updates to its website pursuant to the passage of the 21st Century Integrated Digital Experience Act.[6] The revamped website provides more user functionality, including a section of the website dedicated to floodplain management.

[6] 21st Century Integrated Digital Experience Act (21st Century IDEA), Public Law 115–336, 132 Stat. 5025 (2018).

III. Summary of Changes

The final rule removes the requirements contained in 44 CFR 59.24(a), (c), (d), and (e) that community loss of eligibility notices be published in the **Federal Register** and adds a requirement that FEMA publish the notices on the internet or by another comparable method. FEMA will store these notices on its website for a minimum of one year after the notices are issued, so that they are easily available to all interested parties. These notices will be available in the CSB area of the website and the CSB will also be updated regularly to reflect current community status information. The standard URL link for the CSB is *https://www.fema.gov/national-flood-insurance-program-community-status.* After removal from FEMA's public-facing website, the agency will retain copies of the notices in accordance with all statutory and regulatory requirements. Note that changes to the community's status will be reflected in the updated CSB so that individuals can always find the current status of their community.

Second, 44 CFR 64.6 is revised to remove the requirement that FEMA maintain a list of communities eligible for flood insurance under the NFIA in the CFR. Instead, the final rule requires publication and maintenance of the list on the internet or through another comparable method. As explained in the NPRM, FEMA will continue to maintain an online CSB, providing a list of communities that are, and are not, eligible for flood insurance under the NFIP. These changes do not impact the other notification requirements found at 44 CFR 59.24. To aid in the transition to the new form of publication, FEMA will publish brief notices monthly in the **Federal Register** for six months, after the effective date of this rule, alerting stakeholders to the change, and letting them know where to go to access community status information. The agency will also complete various outreach activities, including notifications to impacted communities as part of the 90-day and 30-day letters they receive during the suspension process, updated process information to state and local partners, and webinars and other materials for flood insurance agents and the public.

IV. Regulatory Analysis

A. Executive Orders 12866, ''Regulatory Planning and Review'', 13563, ''Improving Regulation and Regulatory Review'', and 13771, ''Reducing Regulation and Controlling Regulatory Costs''

Executive Orders 13563 (''Improving Regulation and Regulatory Review'') and 12866 (''Regulatory Planning and Review'') 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs'') directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

The Office of Management and Budget (OMB) has not designated this rule a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. *See* OMB's Memorandum ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs' '' (April 5, 2017).

1. Need for Regulatory Action

Under the NFIA, FEMA may only grant flood insurance to properties within communities that have adopted adequate land use and control measures.[7] Pursuant to this statutory direction, FEMA has adopted regulations governing community eligibility for participation in the NFIP at 44 CFR parts 59, 60, and 64. These regulations include requirements that a community follow certain steps to retain eligibility for the NFIP. If a community fails to follow these requirements or decides to withdraw from the NFIP, FEMA initiates loss of eligibility procedures as described in 44 CFR 59.24 and publishes a notice of the upcoming loss of eligibility in the **Federal Register**. In addition, 44 CFR 64.6 states that flood insurance under the NFIP is authorized for communities set forth under Section 64.6 of the regulations, requiring FEMA to maintain a list of eligible communities in the CFR.

FEMA is making two changes to the current regulations.

First, FEMA will remove the requirement pursuant to § 59.24(a), (c), (d), and (e) to publish community loss of eligibility notices in the **Federal Register**. In lieu of publication in the **Federal Register**, the rule requires that these notices be published on the internet or by another comparable method. To aid in the transition, FEMA will publish brief notices in the **Federal Register** for 6 months after the effective date of the final rule, alerting stakeholders to the change.

Second, FEMA is removing the requirement pursuant to § 64.6 that FEMA maintain a list of eligible communities in the CFR. In lieu of this requirement, the final rule will require FEMA to publish and maintain a list of eligible communities on the internet or through another comparable method.

These two changes will result in reduced FEMA expenditures, largely by reducing costs associated with **Federal Register** publication. The changes to § 59.24 will also provide faster and more user-friendly access to community loss of eligibility information by requiring publication of the notices online instead of in the **Federal Register**. In addition, these changes direct FEMA to consolidate community status information into one location, allowing stakeholders to have more streamlined access to community status-related information.

2. Baseline

Requirement To Publish Community Loss of Eligibility Notices in the **Federal Register**

Community loss of eligibility notices were published a total of 246 times in the **Federal Register** from 2010 to 2019. Based on data from these notices, FEMA calculates that on average, from 2007 to 2016, the notices were published about 25 times per year, rounded to the nearest whole number (246 ÷ 10 = 24.6. 24.6 rounded to the nearest whole number = 25).

Requirement To Publish the List of Eligible Communities in the CFR

With respect to the requirement for FEMA to maintain a list of eligible communities in the CFR, FEMA notes that it currently maintains this list online in the Community Status Book rather than in the CFR.[8] In addition, FEMA prepares quarterly reports in an attempt to comply with the publication requirement contained in § 64.6. The quarterly preparation burden is approximately 15 hours per quarter at a cost of $80 per hour, for a total of $4,800 each year (15 hours per quarter × $80 per hour × 4 quarters a year).[9] FEMA has not published the quarterly reports in the CFR since 2006 due to the recurring costs involved, and the ability to maintain a more up-to-date list, since the CFR is only updated annually.

3. Costs

Community Loss of Eligibility Notices: Internet Publication Costs

As a substitute for publishing the required community loss of eligibility notices in the **Federal Register**, this final rule requires FEMA to publish community loss of eligibility notices online. FEMA currently maintains a public website (*www.fema.gov*) where similar notices, bulletins, and updates from across the agency are published for public consumption. While there is no direct cost to adding individual web pages or sections to the site, publishing community loss of eligibility notices online creates labor costs for staff that need to develop a template to format and process the notices for web publication.

FEMA recently completed a website re-design that included more versatile search functionality for the user, a more standardized look and feel, increased search engine optimization, and better capture of meta-data. FEMA anticipated the use of this re-design in the analysis of this final rule. Development of this publication process for online notices will be labor intensive at the beginning. Once a template is created, each update will be less labor intensive than the current practice.

FEMA staff expect it will take approximately 3 days of labor (24 hours) of a General Schedule (GS) Federal employee in the National Capital Region, at the GS–14 Step 5 level ($63.64 hourly wage),[10] to establish the publication process under the redesign. After the publication process is established, FEMA anticipates that it

[7] See 42 U.S.C. 4022(a)(1).

[8] The Community Status Book is available for public viewing at *https://www.fema.gov/national-flood-insurance-program-community-status-book.*

[9] Hourly rates derived from FEMA estimates based on prior contracting benchmarks for this service.

[10] Office of Personnel Management, 2019, Washington-Baltimore-Arlington-DC–MD–VA–WV–PA, Hourly Rate, GS–14, Step 5. Available at *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/DCB_h.pdf.*

will take a GS–14 employee approximately thirty minutes per future publication.

The average 25 notices per year result in a burden to FEMA of $3,392 the first year (($63.64 for GS 14 Step 5 wage × 1.46) [11] × (24 hours of work + (0.5 hour of work × 25 notices per year))) and $1,162 each subsequent year (($63.64 for GS 14 Step 5 wage × 1.46) × (0.5 hour of work × 25 notices per year)) for a 10-year total of $13,850.

TABLE 1—INTERNET PUBLICATION COSTS

Year	Initial internet publication burden (hours) (a)	Recurrent internet publication burden (hours) (b) = (0.25 × 25)	Internet publication cost (c) = (a × b) × ($63.64 × 1.46)
1	24	12.5	$3,392
2	.....	12.5	1,162
3	.....	12.5	1,162
4	.....	12.5	1,162
5	.....	12.5	1,162
6	.....	12.5	1,162
7	.....	12.5	1,162
8	.....	12.5	1,162
9	.....	12.5	1,162
10	.....	12.5	1,162
Total	24	12.5	13,850

Community Loss of Eligibility Notices: Transition/Phase-Out Costs

Upon publication of this final rule, FEMA will aid in the transition from the publication of community loss of eligibility notices in the **Federal Register** to their posting on FEMA's website by publication of transitional announcements in the **Federal Register**. These announcements will alert stakeholders of the new location of these notices and they would be concise and tailored to notify stakeholders of the FEMA web address where the community loss of eligibility notices can be found. FEMA expects these transitional announcements to publish once a month for a 6-month phase-out period following the effective date of the rule.

Community Status Report: Cost Savings

FEMA is removing the requirement pursuant to § 64.6 that FEMA maintain an updated list of eligible communities in the CFR. FEMA does not currently publish updates to the list of communities eligible for flood insurance in the CFR and already maintains an online Community Status Book containing this information.[12] FEMA prepares quarterly reports on the current lists of communities in order to comply with the regulation. These reports are available upon stakeholder request, although they are not published. Modifying the regulations to eliminate the requirement to publish the list in the CFR in favor of publishing the notices in the same location as the community status list that is already maintained on FEMA's website (the Community Status Book) eliminates the preparation of these lists and saves the quarterly preparation burden of approximately 15 hours per quarter at $80 per hour,[13] yielding a cost savings of $4,800 ($80 per hour × 15 hours per quarter × 4 quarters a year) annually. This revision will save FEMA costs without affecting policyholders or other stakeholders.

TABLE 2—NET COST SAVINGS

Year	Internet publication cost	Community status report cost savings	Net cost savings	NPV at 3%	NPV at 7%
1	$3,392	−$4,800	−$1,408	−$1,367	−$1,315
2	1,162	−4,800	−3,638	−3,429	−3,178
3	1,162	−4,800	−3,638	−3,329	−2,970
4	1,162	−4,800	−3,638	−3,232	−2,775
5	1,162	−4,800	−3,638	−3,138	−2,594
6	1,162	−4,800	−3,638	−3,047	−2,424
7	1,162	−4,800	−3,638	−2,958	−2,266
8	1,162	−4,800	−3,638	−2,872	−2,117
9	1,162	−4,800	−3,638	−2,788	−1,979
10	1,162	−4,800	−3,638	−2,707	−1,849
Total	13,850	−48,000	−34,150	−28,868	−23,468
Annualized	.....	.....	.....	−3,384	−3,341

[11] Bureau of Labor Statistics, Employer Costs for Employee Compensation, Table 1. ''Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group, March 2019.'' Available at *http://www.bls.gov/news.release/archives/ecec_06182019.pdf.* Accessed June 24, 2020. The wage multiplier is calculated by dividing total compensation for all workers of $36.77 by wages and salaries for all workers of $25.22 per hour yielding a benefits multiplier of approximately 1.46.

[12] The Community Status Book is available for public viewing at *https://www.fema.gov/national-flood-insurance-program-community-status-book.*

[13] Hourly rates derived from FEMA estimates based on prior contracting benchmarks for this service.

The net cost savings expected from this rulemaking are presented in Table 2. The up-front transition costs are only expected to take place in Year 1, thus the cost savings expected over the subsequent years are not impacted. For the 10-year period analyzed, the estimated quantified discounted total cost savings at 7 and 3 percent are $23,468 (annualized at $3,341) and $28,868 (annualized at $3,384), respectively.

4. Benefits

Revising 59.24 to eliminate the **Federal Register** publication requirements allows FEMA to be more agile and timely in updating community status information. In contrast, continued updates through the **Federal Register** would be slower, more expensive to FEMA, and present the information in a format that is less accessible to stakeholders.

In addition, making this change to 59.24, and updating FEMA's regulations in § 64.6, will locate all information related to community status and eligibility for flood insurance in one place that is well-known by stakeholders. This consolidation would improve the ease and efficiency of locating community status and eligibility information for stakeholders and for FEMA.

5. Transfers

Transfer payments are monetary payments from one group to another that do not affect total resources available to society. There are no anticipated transfer payments resulting from this final rule.

6. Alternatives Considered

FEMA considered continuing with their current method to publish the community loss of eligibility notices in the **Federal Register**. This would have taken more time to publish changes and updates. However, stakeholders would know where to access the information since the location of information would not change.

FEMA also considered the suggestion of one of the commenters about broadcasting the community status information through TV commercials, social media, or billboards in the impacted community to raise awareness. Some of these suggestions would result in additional costs and would not necessarily result in sufficient or immediate access to the information that the final rule changes provide. Additionally, notices of NFIP community status are routine and not suited to social media platforms that are more focused on communicating materials regarding the Agency's mission, including disaster preparedness, mitigation, and response and recovery to stakeholders.

7. Summary

Table 3 provides the A–4 accounting summary.

TABLE 3—A–4 ACCOUNTING STATEMENT

[2019$]

Category	7 Percent discount rate	3 Percent discount rate	Source citation (RIA, preamble, etc.)
Benefits			
Annualized Monetized	$0	$0	
Annualized Quantified	N/A	N/A	
Qualitative	• Allows FEMA to be more agile and timely in updating community status information • Improve the ease and efficiency of locating community status and eligibility information		RIA
Costs			
Annualized Monetized	−$3,341	−$3,384	RIA
Annualized quantified	N/A	N/A	
Qualitative	N/A		
Transfers			
Annualized Monetized $millions/year	N/A	N/A	
From/To	N/A		
Effects			
State, Local, and/or Tribal Government	None		
Small business	None		
Wages	None		
Growth	None		

A. Regulatory Flexibility Act

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. 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. This rule does not directly impact any small entities. This rule only changes how FEMA shares loss of community

eligibility notices and community status information.

FEMA used the U.S. Census Bureau's 2017 Census of Government [14] to estimate the number of small government jurisdictions in the United States. According to the U.S. Census, there are 38,779 jurisdictions consisting of counties, municipalities, and townships within the United States. Among these, 35,748 would qualify as small government jurisdictions, which would equate to 92.2 percent of all U.S. governmental jurisdictions. Applying this percentage to the 22,490 communities currently participating in the National Flood Insurance Program (NFIP) [15] results in an estimated 20,736 small governmental jurisdictions. Individual policyholders are not considered small entities.

FEMA believes this rule would not impose any direct costs on small entities and would allow easier access to information about flood insurance eligibility. Accordingly, FEMA certifies that this rule will not have a significant economic impact on a substantial number of small entities. FEMA requested comments as to the impact that the NPRM would have on small governmental jurisdictions; no comments were received.

1. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 658, 1501–1504, 1531–1536, 1571, pertains to any rulemaking which is likely to result in the promulgation of any rule that includes 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 million (adjusted annually for inflation) or more in any one year. If the rulemaking includes a Federal mandate, the Act requires an agency to prepare an assessment of the anticipated costs and benefits of the Federal mandate. The Act also pertains to any regulatory requirements that might significantly or uniquely affect small governments. Before establishing any such requirements, an agency must develop a plan allowing for input from the affected governments regarding the requirements.

FEMA has determined that this rulemaking will not result in the expenditure by State, local, and Tribal governments, in the aggregate, nor by the private sector, of $100,000,000 or more in any one year as a result of a Federal mandate, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

2. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA), as amended, 44 U.S.C. 3501–3520, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency obtains approval from the Office of Management and Budget (OMB) for the collection and the collection displays a valid OMB control number. See 44 U.S.C. 3506, 3507. FEMA collects community information for the purposes of application to the NFIP under OMB Control Number 1660–0004, Application for Participation in the National Flood Insurance Program (NFIP).[16] However, FEMA has determined that this rulemaking does not impact this information collection or any other collection of information under the PRA.

3. Privacy Act/E-Government Act

Under the Privacy Act of 1974, 5 U.S.C. 552a, an agency must determine whether implementation of a proposed regulation will result in a system of records. A ''record'' is any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his/her education, financial transactions, medical history, and criminal or employment history and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. *See* 5 U.S.C. 552a(a)(4). A ''system of records'' is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. *See* id. section 552a(a)(5). An agency cannot disclose any record which is contained in a system of records except by following specific procedures.

The E-Government Act of 2002, 44 U.S.C. 3501 note also requires specific procedures when an agency takes action to develop or procure information technology that collects, maintains, or disseminates information that is in an identifiable form. This Act also applies when an agency initiates a new collection of information that will be collected, maintained, or disseminated using information technology if it includes any information in an identifiable form permitting the physical or online contacting of a specific individual.

In accordance with DHS policy, FEMA has completed a Privacy Threshold Analysis (PTA) for this rule. DHS determined that this rulemaking is not privacy sensitive, as it does not affect the information collected about an individual. FEMA's original collection and maintenance of NFIP related personally identifiable information has coverage under the DHS/FEMA–003-National Flood Insurance Program Files, 79 FR 28747 (May 19, 2014) System of Records Notice and the DHS/FEMA/PIA—011 National Flood Insurance Program Information Technology System Privacy Impact Assessment. Therefore, this rulemaking does not require coverage under an existing or new Privacy Impact Assessment or System of Records Notice.

4. Executive Order 13175, ''Consultation and Coordination With Indian Tribal Governments''

Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' 65 FR 67249, (Nov. 9, 2000), applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal government, or the agency consults with Tribal officials.

Nor, to the extent practicable by law, may an agency promulgate a regulation that has Tribal implications and preempts Tribal law, unless the agency consults with Tribal officials. Although Tribes that meet the NFIP eligibility criteria can participate in the NFIP in

[14] See U.S. Census Bureau, ''2017 Census of Governments, Local Governments by Type and State 2017,'' Table 2, April 25, 2019, available at: *https://www2.census.gov/programs-surveys/gus/tables/2017/cog2017_cg1700org02.zip?#*. Accessed June 25, 2020.

[15] The number of NFIP communities is derived from ''The National Flood Insurance Program Community Status Book,'' Page 478, located at *https://www.fema.gov/flood-insurance/work-with-nfip/community-status-book*.

[16] See 44 CFR 59.22 for a description of the information collected.

the same manner as communities,[17] FEMA has reviewed this final rule under Executive Order 13175 and has determined that the rule does not have a substantial direct effect on one or more Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. This final rule modernizes notice requirements for community loss of eligibility information and community status information: therefore, the changes in this rule do not substantially or disproportionately affect Indian Tribal governments acting as communities under the NFIP.

5. Executive Order 13132, ''Federalism''

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, 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.'' For the purposes of this Executive Order, the term States also includes local governments or other subdivisions established by the States. Under this Executive Order, Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States. Further, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and local governments, and that is not required by statute, unless the Federal Government provides funds necessary to pay the direct costs incurred by the State and local governments in complying with the regulation, or the agency consults with State and local officials. Nor, to the extent practicable by law, may an agency promulgate a regulation that has federalism implications and preempts State law, unless the agency consults with State and local officials.

FEMA has reviewed this rule under Executive Order 13132 and has determined that it does 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, and therefore does not have federalism implications as defined by the Executive Order. This rule modernizes notice requirements for community status information under the NFIP; therefore, this rule does not impact the substantive rights, roles, or responsibilities of States, and does not limit State policymaking discretion.

6. National Environmental Policy Act of 1969 (NEPA)

Section 102 of the National Environmental Policy Act of 1969 (NEPA), 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*) requires agencies to consider the impacts of their proposed actions on the quality of the human environment. The Council on Environmental Quality's procedures for implementing NEPA, 40 CFR 1500 *et seq.,* require Federal agencies to prepare Environmental Impact Statements (EIS) for major Federal actions significantly affecting the quality of the human environment. Each agency can develop categorical exclusions to cover actions that have been demonstrated to not typically trigger significant impacts to the human environment individually or cumulatively. Agencies develop environmental assessments (EA) to evaluate those actions that do not fit an agency's categorical exclusion and for which the need for an EIS is not readily apparent. At the end of the EA process, the agency will determine whether to make a Finding of No Significant Impact (FONSI) or whether to initiate the EIS process.

Rulemaking is a major Federal action subject to NEPA. Categorical exclusions A3 included in the list of exclusion categories at Department of Homeland Security Manual 023–01–001–01, Revision 01, Implementation of the National Environmental Policy Act, Appendix A, issued November 6, 2014, covers the promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, and advisory circulars if they meet certain criteria provided in A3(a–f). This final rule meets Categorical Exclusion A3(d), ''Those that interpret or amend an existing regulation without changing its environmental effect.''

7. Congressional Review of Agency Rulemaking

Under the Congressional Review of Agency Rulemaking Act (CRA), 5 U.S.C. 801–808, before a rule can take effect, the Federal agency promulgating the rule must submit to Congress and to the Government Accountability Office (GAO) a copy of the rule; a concise general statement relating to the rule, including whether it is a major rule; the proposed effective date of the rule; a copy of any cost-benefit analysis; descriptions of the agency's actions under the Regulatory Flexibility Act and the Unfunded Mandates Reform Act; and any other information or statements required by relevant executive orders.

FEMA has sent this final rule to the Congress and to GAO pursuant to the CRA. The rule is not a ''major rule'' within the meaning of the CRA. It will not have an annual effect on the economy of $100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

List of Subjects

44 CFR Parts 59

Flood insurance, Reporting and recordkeeping requirements.

44 CFR Part 64

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FEMA amends 44 CFR parts 59 and 64 as follows:

PART 59—GENERAL PROVISIONS

■ 1. The authority citation for part 59 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.,* Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

■ 2. Amend § 59.24 by:
■ a. Revising the fourth sentence of paragraph (a);
■ b. Revising the fourth sentence of paragraph (c);
■ c. Revising the second sentence of paragraph (d);
■ d. Revising the second sentence of paragraph (e).

The revisions read as follows:

§ 59.24 Suspension of community eligibility.

(a) * * * If, subsequently, copies of adequate flood plain management regulations are not received by the Administrator, no later than 30 days before the expiration of the original six month period the Federal Insurance

[17] Although the NFIP does not explicitly reference Tribal Governments, FEMA includes Tribal nations in its definition of a community. See 44 CFR 59.1.

Administrator shall provide written notice to the community and to the state and assure publication of the community's loss of eligibility for the sale of flood insurance on the internet or by another comparable method, such suspension to become effective upon the expiration of the six month period.
* * *

* * * * *

(c) * * * If a community is to be suspended, the Federal Insurance Administrator shall inform it upon 30 days prior written notice and upon publication of its loss of eligibility for the sale of flood insurance on the internet or by another comparable method. * * *

(d) * * * If a community is to be suspended, the Federal Insurance Administrator shall inform it upon 30 days prior written notice and upon publication of its loss of eligibly for the sale of flood insurance on the internet or by another comparable method.
* * *

(e) * * * Upon receipt of a certified copy of a final legislative action, the Federal Insurance Administrator shall withdraw the community from the Program and publish its loss of eligibility for the sale of flood insurance on the internet or by another comparable method. * * *
* * * * *

PART 64—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

■ 3. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

■ 4. Revise § 61.6 to read as follows:

§ 64.6 List of eligible communities.

FEMA will maintain a list of communities eligible for the sale of flood insurance pursuant to the National Flood Insurance Program (42 U.S.C. 4001–4128). This list will be published and maintained on the internet or through another comparable method.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–23970 Filed 10–29–20; 8:45 am]

BILLING CODE 9111–52–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 180

[Docket No. PHMSA–2017–0083 (HM–219B)]

RIN 2137–AF30

Hazardous Materials: Response to an Industry Petition To Reduce Regulatory Burden for Cylinder Requalification Requirements

AGENCY: Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA) is amending the requirements of the requalification periods for certain Department of Transportation (DOT) 4-series specification cylinders in non-corrosive gas service in response to a petition for rulemaking submitted by the National Propane Gas Association (NPGA).

DATES:

Effective date: This rule is effective November 30, 2020.

Voluntary compliance date: Voluntary compliance with all amendments is authorized October 30, 2020.

FOR FURTHER INFORMATION CONTACT: Lily Ballengee, Standards and Rulemaking Division, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Overview

PHMSA is amending the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) for certain commonly used DOT 4-series specification cylinders in non-corrosive gas service. This final rule authorizes 12-year initial and subsequent requalification periods for volumetric expansion testing and a 12-year initial requalification period for proof pressure testing. This final rule does not modify the existing 10-year subsequent requalification periods for proof pressure testing. In addition, it makes clarifying and conforming edits to the requalification table in § 180.209(a) and the text in paragraph (e). This final rule provides regulatory relief by reducing requalification-related costs for propane marketers, distributors, and others in non-corrosive gas service without reducing safety. PHMSA also withdraws its Statement of Enforcement Discretion issued on March 17, 2017, as of the effective date of this final rule.

II. Background

A. Summary of Historical Changes to the Regulatory Text

As further discussed throughout this section, the requalification periods for volumetric expansion and proof pressure testing—to include the first requalification after manufacture (''initial requalification'') and the recurring requalifications required after the initial requalification (''subsequent requalification(s)'')—have evolved through various regulatory actions. Table 1 summarizes the history of changes to the timelines for requalification by volumetric expansion and proof pressure testing that are the subject of this rulemaking. The requalification time periods memorialized in Table 1 as having been in place ''Prior to HM–233F'' date from 1964.[1]

[1] See Interstate Commerce Commission, Explosives and Other Dangerous Articles, 29 FR 18651 (Dec. 29, 1964) (introducing requalification period requirements at Note 2 to § 173.34(e)(9)).

TABLE 1—HISTORY OF CHANGES TO THE TIMELINE FOR VOLUMETRIC EXPANSION AND PROOF PRESSURE TESTING AND REQUALIFICATION

	Prior to HM–233F (years)	HM–233F final rule (years)	NPGA petition (P–1696) (years)	HM–219B NPRM (years)	NPGA comment to NPRM (i.e., NPGA Alternative) (years)	HM–219B final rule (years)
Initial Period for Volumetric Expansion and Proof Pressure Testing	12	10	12	12	12	12
Volumetric Expansion Subsequent Requalification Periods	12	10	12	12	12	12
Proof Pressure Subsequent Requalification Periods	7	10	7	10	12	10

B. HM–233F Notice of Proposed Rulemaking and Final Rule

On January 30, 2015, PHMSA published a notice of proposed rulemaking (NPRM) titled ''Hazardous Materials: Adoption of Special Permits (MAP–21) (RRR)'' [Docket No. PHMSA–2013–0042 (HM–233F); 80 FR 5339].[2] The HM–233F NPRM proposed to adopt provisions contained in a number of widely-used or longstanding special permits with an established safety record. Following a 60-day comment period, PHMSA published a final rule on January 21, 2016, that codified provisions from most of those special permits in the HMR [81 FR 3635].[3] The HM–233F final rule became effective on February 22, 2016.

Prior to publication of the HM–233F final rule, § 180.209(e) authorized DOT 4-series cylinders used exclusively for non-corrosive, gaseous hazardous materials to be requalified by volumetric expansion every 12 years. Alternatively, these cylinders were authorized to be requalified by the proof pressure test method after a 12-year initial requalification period and then every 7 years thereafter for subsequent requalification. The HM–233F final rule amended § 180.209(e) to revise both requalification periods to 10 years for DOT 4B, 4BW, 4BA, or 4E specification cylinders used exclusively for non-corrosive, gaseous hazardous materials.

A volumetric expansion test ensures that a cylinder is free of leaks and determines the total expansion (*i.e.,* the total increase in a cylinder's volume due to application of the test pressure) and permanent expansion (*i.e.,* the permanent increase in a cylinder's volume after the test pressure is released) of a cylinder at a given pressure. The volumetric expansion test is conducted by either the water jacket or direct expansion methods. The water jacket method measures the difference between the volume of water a cylinder externally displaces at test pressure and the volume of water a cylinder externally displaces at ambient pressure; in contrast, the direct expansion method measures the amount of water forced into a cylinder at test pressure, adjusted for the compressibility of water, as a means of determining the expansion of cylinder volume. See § 180.203. A proof pressure test is conducted by interior pressurization without the determination of a cylinder's expansion. While a proof pressure test may also detect leaks, its intended purpose is to verify whether a cylinder can withstand pressure above its intended operating pressure without permanent damage. Both volumetric expansion and proof pressure tests can be used to meet the requalification requirements in § 180.209(e); however, they are not equivalent testing measures and each provide certain advantages. Notably, the volumetric expansion test has the comparative benefit of determining the cylinder's total expansion and the amount of permanent damage to the cylinder. The proof pressure test, meanwhile, is less difficult to perform.

Among the special permits that PHMSA proposed to incorporate into the HMR in the HM–233F NPRM were the provisions of DOT Special Permit (DOT–SP) 12084 issued to Honeywell International Inc.[4] DOT–SP 12084 had authorized the requalification via proof pressure testing of DOT 4B, 4BA, or 4BW cylinders for 11 additional non-corrosive gases not listed in the version of § 180.209(e) that was in effect at that time. The HM–233F NPRM proposed to revise § 180.209(e) by replacing the list of specific hazardous materials within that provision with broader language extending § 180.209(e) to any non-corrosive gases commercially free from corroding components.[5]

In the HM–233F NPRM, PHMSA also proposed to amend the requalification periods for both the volumetric expansion and proof pressure tests in § 180.209(e). Specifically, PHMSA proposed to standardize initial and subsequent requalification periods to 10 years for both the volumetric expansion test (previously 12 years for both initial and subsequent requalification) and the proof pressure test (previously 7 years for subsequent requalification after an initial 12-year requalification period). This change was not prompted by any safety concerns pertaining to the then-controlling initial and subsequent requalification periods. Rather, PHMSA sought to align the requalification periods in § 180.209(e) with the internationally-recognized and validated 10-year (initial and subsequent) requalification periods for United Nations (UN) pressure receptacles, which PHMSA had previously determined were safe enough to merit incorporation into the HMR at § 180.207(c).[6] Due to an administrative oversight, those proposed changes to § 180.209(e) were not discussed in the preamble of the HM–233F NPRM.

PHMSA received no adverse comments to any of the proposed changes to § 180.209(e) and therefore adopted the revisions as proposed in the final rule. While the effective date of the final rule was February 22, 2016, PHMSA allowed for delayed compliance with the revised § 180.209(e) to begin on January 23, 2017.

C. Petition P–1696

On January 13, 2017, NPGA submitted a petition to PHMSA, titled ''Petition for

[2] Hazardous Materials: Adoption of Special Permits NPRM (MAP–21) (RRR), 80 FR 5339 (Jan. 30, 2015) (docket no. PHMSA–2013–0042–0001, available at: *https://www.regulations.gov/document?D=PHMSA-2013-0042-0001*).

[3] Hazardous Materials: Adoption of Special Permits Final Rule (MAP–21) (RRR), 81 FR 3636 (Jan. 21, 2016) (docket no. PHMSA–2013–0042–0030, available at: *https://www.regulations.gov/document?D=PHMSA-2013-0042-0030*).

[4] See DOT–SP 12084, available at: *https://www.phmsa.dot.gov/approvals-and-permits/hazmat/file-serve/offer/SP12084.pdf/offerserver/SP12084*.

[5] As defined in § 180.203, ''commercially free of corrosive components'' means a hazardous material having a dew point at or below minus 46.7 °C (minus 52 °F) at 101kPa (1 atmosphere) and free of components that will adversely react with the cylinder (*e.g.,* chemical stress corrosion).

[6] See 71 FR 33858, at 33869–70 (June 12, 2006). Section 180.207(d) makes the 10-year initial and subsequent requalification periods available for both volumetric expansion and proof pressure testing methods.

Rulemaking and Emergency Stay Cylinder Requalification Requirements'' [PHMSA–2017–0019 (P–1696)].[7] NPGA requested that PHMSA amend § 180.209(e) to restore the initial and subsequent requalification periods for both volumetric expansion and proof pressure testing in § 180.209(e) to those authorized prior to the HM–233F final rule, as well as make conforming changes to the table in § 180.209(a). NPGA also requested that PHMSA issue an emergency stay of enforcement of HM–233F's amendments to § 180.209(e) while PHMSA was considering its petition.

In the petition, NPGA advised PHMSA that the HM–233F rulemaking created regulatory confusion and imposed substantial compliance costs. Specifically, NPGA asserted that the regulatory changes to the requalification periods for volumetric expansion testing (initial and subsequent requalifications) and proof pressure testing (initial requalification) created confusion in the propane industry. NPGA stated that it was unclear whether cylinders manufactured or requalified within the last 10 to 12 years had to be requalified immediately, since prior to the HM–233F final rule their requalification would not have been required until 12 years from the date of manufacture (volumetric expansion and proof pressure testing) or their last requalification (volumetric expansion testing). Furthermore, NPGA stated that the more frequent subsequent requalification by volumetric expansion testing (*i.e.,* every 10 years instead of every 12 years) required by the HM–233F final rule would increase requalification testing costs. NPGA further explained that because current industry practice[8] is to mark newly manufactured cylinders eligible for requalification in accordance with § 180.209(e) with a 12-year requalification mark, industry would have to train employees to ignore such markings. NPGA also contended that costs associated with training on the revised requalification periods for volumetric expansion and proof pressure testing would not be accompanied by a corresponding safety benefit.

On March 2, 2017, PHMSA met with NPGA representatives to: (1) Better understand NPGA's concerns; (2) identify existing industry practice and request data to assess the impact of the revised cylinder requalification periods; and (3) evaluate the merits of undertaking a rulemaking and issuing an emergency stay of enforcement as recommended by NPGA. NPGA reiterated its position that the change in requalification intervals would impose unanticipated industry costs. Furthermore, NPGA conveyed that a majority of its associate members requalify certain DOT 4-series specification cylinders by volumetric expansion testing.

Pursuant to § 106.105, PHMSA accepted NPGA's petition[9] on March 7, 2017, and initiated this rulemaking.

D. Statement of Enforcement Discretion

On March 17, 2017, PHMSA issued a Statement of Enforcement Discretion while it reviewed NPGA's petition for rulemaking.[10] This Statement of Enforcement Discretion specified that DOT 4-series specification cylinders requalified by volumetric expansion in accordance with § 180.209(e) may have a 10- or 12-year requalification period without any enforcement action taken. The Statement of Enforcement Discretion is withdrawn upon the effective date of this final rule.

E. HM–219B Notice of Proposed Rulemaking; Executive Order 13924

On August 6, 2019, PHMSA published an NPRM [Docket No. PHMSA–2017–0083–0004 (HM–219B); 84 FR 38180][11] proposing changes to the requalification periods in § 180.209(e) and clarifying edits to the table in paragraph (a). Specifically, the HM–219B NPRM proposed to return the initial and subsequent requalification periods for volumetric expansion tests to 12 years, and to return the initial requalification period for proof pressure testing to 12 years. In addition, PHMSA proposed to revise the title of § 180.209(e) to reflect the content of that paragraph better. PHMSA also proposed to amend the table in § 180.209(a) to reflect the baseline requalification period and the alternate requalification period allowances for certain DOT specification cylinders consistent with the amendments to § 180.209(e); to remove any reference to paragraph (e) for DOT 3A, 3AA, 3AL, 3AX, 3AAX, 3B, 3BN, and 4AA480 cylinders, which are not authorized for requalification by the proof pressure method in § 180.209(e); to add a ''7'' for DOT 4B, 4BA, or 4BW cylinders, which are authorized for requalification every 7 or 12 years, instead of 5 years, when used as a fire extinguisher in accordance with § 180.209(j);[12] and to make additional editorial corrections for consistency.

The NPRM mirrored NPGA's proposed amendments except that it retained the HM–233F final rule's 10-year period for subsequent proof pressure requalification testing. In the HM–219B NPRM, PHMSA explained that the extended period for subsequent requalification by proof pressure test (10 years versus 7 years) may provide savings that outweigh the costs of compliance training on the HM–233F final rule and requested comment on the potential costs or savings that may result.

The comment period closed on October 7, 2019. PHMSA received comments in response to the HM–219B NPRM from Gentry Investigation Service, LLC (GIS) and NPGA. PHMSA also received comments from The Chemours Company (Chemours) on October 23, 2019. Consistent with §§ 5.13(i)(5) and 106.70(b), PHMSA considered Chemours's late-filed comments given its interest in the rulemaking and the absence of additional expense or delay resulting from consideration of its comments.

Following the closing of the comment period, Executive Order 13924, ''Regulatory Relief to Support Economic Recovery'' (85 FR 31353, May 22, 2020) directed Federal agencies to respond to the economic harm caused by the novel coronavirus by reviewing their regulations to identify regulatory requirements for potential rescission or modification to reduce regulatory burdens and thereby promote economic growth. Executive Order 13924 at section 4. PHMSA understands the cost savings expected from the HMR amendments adopted in this final rule to be consistent with Executive Order 13924's mandate.

III. NPRM Comment Discussion

A. Comments Related to the Requalification Periods

In its comment to the NPRM, NPGA requested that PHMSA modify

[7] NPGA Petition for Rulemaking & Emergency Stay Cylinder Requalification Requirements, available at: *https://www.regulations.gov/document?D=PHMSA-2017-0083-0002.*

[8] NPGA acknowledges this industry practice is voluntary and not required by the HMR.

[9] DOT P–1696 Acceptance Letter, available at: *https://www.regulations.gov/document?D=PHMSA-2017-0019-0004.*

[10] Notice Regarding the Requalification Period for Department of Transportation (DOT) Specification Cylinders, available at: *https://www.regulations.gov/document?D=PHMSA-2017-0083-0001.*

[11] Hazardous Materials: Response to an Industry Petition to Reduce Regulatory Burden for Cylinder Requalification Requirements NPRM, 84 FR 38180 (Aug. 6, 2019), available at: *https://www.regulations.gov/document?D=PHMSA-2017-0083-0004.*

[12] As proposed in the NPRM, this is a conforming amendment for consistency between the table in paragraph (a) and the provisions in paragraph (j), which was inadvertently deleted in the HM–233F final rule.

§ 180.209(e) to permit a universal 12-year period for both initial and subsequent requalification by either volumetric expansion or proof pressure testing. This is a departure from NPGA's initial recommendation in P–1696 to revert to the historical 7-year subsequent requalification periods for proof pressure testing. Chemours and GIS, meanwhile, expressed their support for the initial and subsequent requalification periods for volumetric expansion and proof pressure testing provided in the HM–219B NPRM. In this final rule, PHMSA is adopting the changes to the requalification periods for volumetric expansion (initial and subsequent requalification) and proof pressure testing (initial requalification) proposed in the HM–219B NPRM.

B. Initial Requalification Periods; Subsequent Requalification Periods via Volumetric Expansion Testing

PHMSA received no comments opposing the NPRM's proposal to amend § 180.209(e) to restore a 12-year initial requalification testing period by both volumetric expansion and proof pressure testing, and 12-year subsequent requalification periods by volumetric expansion testing.

DOT 4-series cylinders—which are commonly used and include everything from small propane cylinders typically used in home grilling applications to larger cylinders used in the construction industry—have been in service as authorized packaging types for decades. Despite millions of these cylinders having entered into service and having been requalified as provided by the HMR before the HM–233F final rule, there have been few reported incidents, and PHMSA is unaware of any systematic safety concerns. The historically safe use of these cylinders demonstrates that restoration of the previously-authorized 12-year requalification periods proposed by the NPRM will not have an adverse effect on safety.

PHMSA further notes that reversion to the historical 12-year subsequent requalification period for volumetric expansion testing as proposed in the NPRM would likely not impose substantial regulatory costs. Even though the HM–233F final rule provided that its 10-year subsequent requalification period for volumetric expansion testing would become mandatory in January 2017, the Statement of Enforcement Discretion issued in March 2017 gave regulated entities a reprieve from that more frequent subsequent requalification testing requirement until the conclusion of this rulemaking. The NPRM subsequently signaled PHMSA's intent to revert to the historical 12-year subsequent requalification period for volumetric expansion testing. PHMSA therefore expects that few regulated entities have adjusted their compliance programs and training in conformity with this element of the HM–233F final rule such that they would incur additional costs from reverting to the historical 12-year subsequent requalification for volumetric expansion as proposed in the NPRM.

C. Subsequent Requalification via Proof Pressure Testing

Prior to the HM–233F final rule, the provision for a 7-year subsequent requalification period by proof pressure testing had remained unchanged since 1964. In the HM–219B NPRM, PHMSA invited comments on the potential costs or savings that may result from maintaining 10-year subsequent requalification periods via proof pressure testing established by the HM–233F final rule, instead of returning to the historical 7-year subsequent requalification period by proof pressure testing as proposed by NPGA in its petition. Chemours and GIS expressed support for retaining the 10-year subsequent requalification periods for proof pressure testing contemplated by the NPRM. NPGA in its comments submitted in response to the NPRM agreed with the other commenters that PHMSA should not revert to the original 7-year subsequent requalification period by proof pressure testing as it had originally urged in its petition for rulemaking—and now called for extension of subsequent requalification periods for proof pressure testing to 12 years. NPGA contended that its newly-iterated preference would further reduce regulatory burdens without adversely impacting safety.

In the HM–233F final rule, PHMSA sought to align the subsequent requalification period for proof pressure testing in § 180.209(e) with the 10-year subsequent proof pressure test requalification period for UN-specification cylinders included in the HMR at § 180.207(c). While PHMSA expected that a longer subsequent requalification period would promote consistency within the HMR and thereby enhance compliance while reducing regulatory burdens, NPGA's petition for rulemaking argued that this and other changes adopted in the HM–233F final rule would in fact entail substantial costs to update compliance programs and train personnel.

PHMSA notes the 10-year period for subsequent proof pressure testing has been codified within the HMR since the HM–233F final rule became effective in February 2016, and regulated entities must have been in compliance since January 2017.[13] Any compliance program adjustments and additional training required to account for the change from a 7-year to 10-year subsequent requalification period for proof pressure testing have likely already been implemented. Further, regulated entities remain free to continue subsequent requalification of cylinders via proof pressure testing more frequently—every 7 years instead of every 10 years—than as required by § 180.209(e). On the other hand, if PHMSA were now to revert to the historical 7-year subsequent requalification period requirement for proof pressure testing as NPGA's petition for rulemaking had recommended, the result would be additional compliance program and training costs for those entities that had adjusted their compliance and training programs in conformity with the changes introduced by the HM–233F final rule. Given the absence from the administrative record of any safety benefits that could be evaluated against the regulatory costs associated with reverting to the historical 7-year subsequent requalification period for proof pressure testing, PHMSA has decided against so amending § 180.209(e).

Similarly, PHMSA finds that the administrative record does not justify 12-year subsequent requalification periods for proof pressure testing. Although NPGA contends that its recently-iterated proposal would yield cost savings, the administrative record contains little evidence that extending the subsequent requalification periods for proof pressure-tested cylinders to 12 years would provide an equivalent level of safety to the 10-year subsequent requalification periods introduced into § 180.209(e) by the HM–233F final rule. Unlike the initial requalification and subsequent requalification via volumetric expansion, PHMSA cannot draw on the historical experience under HMR language predating the HM–233F final rule to evaluate the safety impacts of a 12-year subsequent requalification period via proof pressure testing.

Furthermore, PHMSA notes that while both volumetric expansion and proof pressure tests can be used to meet the requirements in § 180.209(e), they are not equivalent testing measures as suggested by NPGA. Volumetric

[13] The March 17, 2017, Statement of Enforcement discretion pertained only to subsequent requalification by volumetric expansion testing, not proof pressure testing.

expansion testing is a more rigorous testing method than proof pressure testing in that it verifies not only the pressure integrity of a cylinder (as proof pressure testing does), but also the absence of permanent expansion to a cylinder—which may be an indication of extensive wall thinning or other types of damage. This fundamental difference between the two test methods was the basis for their different subsequent requalification periods in the HMR for nearly five decades, and NPGA has not provided data demonstrating that proof pressure testing is sufficient to verify the integrity of a cylinder over successive 12-year subsequent requalification periods. Further, because the potential for compromise of cylinder integrity would increase over time, PHMSA is unconvinced by NPGA's assertion that PHMSA should necessarily have the same confidence in the safety of successive 12-year subsequent requalification periods by proof pressure testing as it does for an initial 12-year requalification period as proposed in the NPRM.

Therefore, in consideration of the lack of record evidence presented by NPGA to demonstrate the safety of its revised recommendation regarding subsequent requalification periods for proof pressure testing, and the support of other commenters for the current 10-year subsequent requalification period by proof pressure testing, PHMSA declines to amend this element of § 180.209(e) as requested by NPGA in its comments on the NPRM.

D. Comments Related to the Requalifier Identification Number

GIS requested that PHMSA either modify §§ 180.209(g) and 180.215(a)(1)–(2) to include a reference to a Visual Only Requalifier Identification Number (VIN) as an acceptable test method for requalifying cylinders, or add a new definition in § 171.8 for ''Requalifier Identification Number (RIN)'' to clarify the different types of RINs issued by the DOT. GIS also recommended modifying § 180.213(d) to include a second example to demonstrate the proper marking method for a VIN and updating the existing DOT publication ''Is Your Propane Cylinder Safe?'' upon completion of the final rule. NPGA expressed support for GIS's proposed HMR modifications and updates to relevant PHMSA guidance documents. Chemours did not comment on GIS's proposals.

PHMSA notes that the revisions GIS recommended were not discussed in the NPRM. Section 180.203 of the HMR defines a ''Requalification identification number or RIN'' as a code assigned by the DOT to identify a cylinder requalification, repair, or rebuilding facility. The Associate Administrator of Hazmat Safety issues a RIN as evidence that an applicant is authorized to requalify DOT specification or special permit cylinders, or TC, CTC, CRC, or BTC specification cylinders or tubes, or UN pressure receptacles based on certain evaluation requirements. See § 107.805(d). A VIN is a subset of a RIN, but more specifically, the VIN pertains only to cylinders that may be requalified visually in accordance with § 180.209(g). PHMSA agrees that this section would benefit from additional clarity but is concerned that GIS's proposed changes to §§ 180.209(g) and 180.215(a)(1)–(2) may cause unnecessary confusion to stakeholders who hold an existing RIN without sufficient notice. As such, PHMSA is not adopting GIS's recommended revisions to the HMR at this time as we would like to allow for further stakeholder engagement and opportunity to comment on any proposed changes before making this determination. PHMSA may consider these changes for inclusion in a future rulemaking.

Finally, PHMSA agrees with GIS's observation that the existing DOT publication ''Is Your Propane Cylinder Safe?'' will need to be updated to conform to the HMR amendments introduced in this final rule.

E. Miscellaneous Comments

GIS expressed its belief that the regulatory changes proposed in the NPRM are inconsistent with the objective of the Regulatory Cooperation Council (RCC) of more closely aligning Canadian and U.S. regulations governing the transportation of hazardous materials. NPGA expressed disagreement with GIS's comment as it does not believe the HMR amendments proposed in the NPRM deviate from the objectives of the RCC, as PHMSA and Transport Canada remain free to continue working to align better their respective regulatory standards. PHMSA agrees with NPGA's comments on this issue and will continue to work with Transport Canada to ensure international regulatory cooperation and reduce, eliminate, and prevent unnecessary differences in regulatory requirements.

GIS provided background information about industry practice and representation included in NPGA's petition. GIS explained that only one domestic manufacturer was marking the collar of the cylinder with a requalification requirement and that this manufacturer stopped after publication of the HM–233F final rule, whereas NPGA's petition presented this practice as widespread. In addition, GIS disagreed with NPGA's statement that most DOT 4-series specification cylinders are requalified by volumetric expansion testing. GIS contends that while large liquefied petroleum gas (LPG) cylinders may be requalified by volumetric expansion or proof pressure testing, it believes most of the LPG industry prefer a visual-only inspection. PHMSA revised the training cost savings in the Final Regulatory Impact Analysis (RIA) after taking into consideration the clarifying information submitted by GIS.

IV. Changes Being Adopted

After reviewing the comments received and taking into consideration the scope of the rulemaking as outlined, PHMSA is adopting the amendments as proposed in the NPRM. This final rule revises the requalification periods in § 180.209(e) for DOT 4-series specification cylinders in non-corrosive gas service to allow for a 12-year initial requalification by volumetric expansion testing or proof pressure testing, and 12-year subsequent requalification periods by volumetric expansion testing. It does not disturb existing HMR provisions providing for 10-year subsequent requalification periods for proof pressure testing. In addition, it makes clarifying and conforming editorial changes to the requalification table in § 180.209(a), as well as the title of § 180.209(e) to reflect the content of that paragraph.

V. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of the Federal Hazardous Materials Transportation Law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*), which authorizes the Secretary of Transportation to ''prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce.'' The Secretary's authority is delegated to PHMSA at 49 CFR 1.97. This final rule proposes to amend the requalification periods for certain DOT 4-series specification cylinders under relief provided in § 180.209(e) and to revise the requalification table in § 180.209(a) accordingly.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a nonsignificant regulatory action under section 3(f) of Executive Order 12866

(''Regulatory Planning and Review'') [14] and therefore was not reviewed by the Office of Management and Budget (OMB). This final rule is also considered a nonsignificant rulemaking under the DOT rulemaking procedures at 49 CFR part 5.

Executive Order 12866 requires agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' Additionally, Executive Order 12866 requires agencies to provide a meaningful opportunity for public participation, which also reinforces requirements for notice and comment under the Administrative Procedure Act (5 U.S.C. 553 *et seq.*). Similarly, DOT regulations at § 5.5(f)–(g) require that regulations issued by PHMSA and other DOT Operating Administrations ''should be designed to minimize burdens and reduce barriers to market entry whenever possible, consistent with the effective promotion of safety'' and should generally ''not be issued unless their benefits are expected to exceed their costs.''

PHMSA's preliminary analysis found that the proposed changes would result in total net cost savings of approximately $142.4 million over 10 years, or $20.3 million annualized, when discounted at 7 percent. PHMSA made a minor revision to exclude training-related cost savings that do not appear warranted after public comment and clarification presented by GIS. With the revision, PHMSA finds total net cost savings of approximately $140.5 million over 10 years, discounted at 7 percent, or $20.0 million annualized at 7 percent. Please see the rulemaking docket for the Final RIA for additional details.

C. Executive Order 13771

This final rule is expected to be a deregulatory action under Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs'').[15] Details on the estimated cost savings of this proposed rule can be found in the Final RIA included in the rulemaking docket.

D. Executive Order 13132

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism'') [16] and the President's memorandum (''Preemption'') that was published in the **Federal Register** on May 22, 2009 [74 FR 24693]. Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may 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 rulemaking will preempt State, local, and Tribal requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Federal hazmat law contains an express preemption provision at 49 U.S.C. 5125(b) that preempts State, local, and Indian Tribal requirements that are not substantively the same as Federal requirements on certain subjects, including the packing, handling, labeling, marking, and placarding of hazardous materials. Because this rulemaking addresses the design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material, it preempts State, local, and Indian Tribe requirements that are not substantively the same as the Federal requirements introduced in this rulemaking. This rulemaking is necessary to provide cost savings and regulatory flexibility to the propane industry.

E. Executive Order 13175

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments'') [17] and DOT Order 5301.1 ''Department of Transportation Policies, Programs, and Procedures Affecting American Indians, Alaska Natives, and Tribes.'' Executive Order 13175 and DOT Order 5301.1 require DOT Operating Administrations to assure meaningful and timely input from Indian Tribal government representatives in the development of rules that significantly or uniquely affect Tribal communities by imposing ''substantial direct compliance costs'' or ''substantial direct effects'' on such communities or the relationship and distribution of power between the Federal Government and Indian Tribes. This final rule neither imposes direct compliance costs on Tribal communities, nor has a substantial direct effect on those communities. Therefore, the funding and consultation requirements of Executive Order 13175 and DOT Order 5301.1 do not apply.

F. Regulatory Flexibility Act, Executive Order 13272, and DOT Policies and Procedures

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires agencies to review regulations to assess their impact on small entities unless the agency determines that a rulemaking is not expected to have significant impact on a substantial number of small entities. This final rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') [18] and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts on small entities are considered properly. This final rule does not have a significant impact on a substantial number of small entities.

This rule provides cost savings and regulatory flexibility to the affected entities, as discussed above and in the Final RIA uploaded to the rulemaking docket. Specifically, the changes provide relief to cylinder manufacturers and marketers of the propane industry, including small entities, by easing requalification requirements with no anticipated reduction in safety. To the extent that new training is required for cylinder marketers to understand the 10-year timeframe applicable to cylinders subsequently requalified by proof pressure testing, these costs were estimated in the NPRM to represent just 1 percent of the estimated cost savings afforded to the same entities.[19]

Further, if a small entity wished to forego these training costs, they could. This is because the applicable timeframe for subsequent requalification by proof pressure testing prior to HM–233F and this rule was 7 years. If they so choose, they could still comply with the HMR by requalifying a cylinder in need of subsequent requalification by proof pressure testing earlier than required (*i.e.,* within 7 years instead of 10).

Consideration of alternative proposals for small businesses. The Regulatory Flexibility Act directs agencies to establish exceptions and differing

[14] 58 FR 51735 (Oct. 4, 1993).

[15] 82 FR 9339 (Feb. 24, 2017).

[16] 64 FR 43255 (Aug. 10, 1999).

[17] 65 FR 67249 (Nov. 9, 2000).

[18] 68 FR 7990 (Feb. 19, 2003).

[19] See Exhibit 8–1—Total Net Cost Savings, in the NPRM. We divide estimated costs of $1.7 million dollars by $163.6 million in estimated cost savings (undiscounted figures).

compliance standards for small businesses, where it is possible to do so and still meet the objectives of applicable regulatory statutes.

PHMSA certifies that this final rule does not have a significant economic impact on a substantial number of small entities. The changes are generally intended to provide regulatory flexibility and cost savings to industry members.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) no person is required to respond to any information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d) of 5 CFR requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests.

PHMSA currently accounts for burdens associated with the requalification of DOT specification cylinders, including DOT 4-series specification cylinders, in OMB Control No. 2137–0022 titled, ''Testing, Inspection and Marking Requirements for Cylinders.'' This OMB Control Number includes burdens associated with the requalification markings, reporting, and recordkeeping requirements of DOT specification cylinders. While this final rule addresses the requalification of certain DOT 4-series specification cylinders addressed in this OMB Control Number, PHMSA believes that the overall effect on the number of respondents and burden hours are negligible in relation to the number of respondents and burden hours associated with this OMB Control Number. In the NPRM, PHMSA solicited comment on the information collection burdens associated with the revision to requalification of certain DOT 4-series specification cylinders and received no such comments.

H. Regulation Identifier Number

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

I. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). It does not result in costs of $100 million or more, adjusted for inflation or more in any year to either State, local, or Tribal governments, in the aggregate, or to the private sector and is the least burdensome alternative that achieves the objective of the rulemaking.

J. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. The Council on Environmental Quality implementing regulations (40 CFR part 1500) require Federal agencies to conduct an environmental review considering (1) the need for the action; (2) alternatives to the action; (3) probable environmental impacts of the action and alternatives; and (4) comments by agencies and persons consulted during the consideration process. DOT Order 5610.1C ''Procedures for Considering Environmental Impacts,'' establishes departmental procedures for the evaluation of environmental impacts under NEPA and its implementing regulations.

1. Need for the Action

In response to a petition for rulemaking submitted by the regulated community, PHMSA is amending the HMR to update the requalification period for certain DOT 4-series specification cylinders in non-corrosive gas service. This action is intended to provide regulatory relief to members of the propane industry, including small entities, by easing requirements with no anticipated reduction in safety.

2. Alternatives Considered

In developing the final rule, PHMSA considered the following alternatives:

Alternative 1: No Action Alternative

If PHMSA were to select the No Action Alternative, it would not proceed with any rulemaking on this subject and the current regulatory standards would remain in effect. This alternative would not address NPGA's petition for rulemaking. As such, § 180.209(e) would not be amended, and the initial and subsequent requalification periods for volumetric expansion and proof pressure testing would remain at a 10-year period. The initial and subsequent requalification periods for the volumetric expansion test would not be extended to 12 years, and the requalification periods for the proof pressure test would not be extended to an initial 12-year period followed by 10-year subsequent requalification periods. Additionally, the Statement of Enforcement Discretion that PHMSA issued on March 17, 2017, would be withdrawn such that the regulated entities would be required to comply with the 10-year standardized periods for initial and subsequent requalification via volumetric expansion or proof pressure testing established by the HM–233F final rule.

Alternative 2: Preferred Alternative

The preferred alternative would revise the requalification periods in § 180.209(e) for DOT 4-series specification cylinders to allow for a 12-year period for initial and subsequent volumetric expansion testing and an initial 12-year period followed by a 10-year requalification period for proof pressure testing. In addition, the Statement of Enforcement Discretion that PHMSA issued on March 17, 2017, would be withdrawn.

Alternative 3: NPGA Alternative

Due to public comment from NPGA, PHMSA considered an alternative in addition to the No Action and Preferred Alternative. This alternative would address NPGA's comment to the NPRM by standardizing 12-year initial and subsequent requalification periods for the volumetric expansion and proof pressure tests for DOT 4-series specification cylinders. In addition, the Statement of Enforcement Discretion that PHMSA issued on March 17, 2017, would be withdrawn.

3. Environmental Impacts

Alternative 1: No Action Alternative

If PHMSA were to select the No Action Alternative, current regulations would remain in place and no new provisions would be added. This alternative would not address NPGA's petition for rulemaking. The current regulatory requirements, with shorter requalification intervals for both volumetric expansion and proof pressure testing, are more conservative and, assuming full compliance, may provide more opportunities to identify cylinders with defects so that they could be repaired or removed from service. However, the effect on the quantity of identified defects is uncertain even with the shorter timeframe of the No Action Alternative. For example, some cylinders would remain in service irrespective of the shorter timeframe, given § 180.205(c), which specifies that a cylinder filled before the requalification becomes due may remain in service until it is emptied. Furthermore, § 180.209(c) provides that

a DOT 4-series cylinder (except a 4L cylinder) must be requalified before being refilled if *at any time* it shows evidence of a leak or of internal or external corrosion, denting, bulging, or rough usage to the extent that it is likely to be weakened appreciably, or that has lost 5 percent or more of its official tare weight. Therefore, regardless of the requalification period, no cylinder may be filled and offered for transportation if it has evidence of damage.

In addition, while the failure of a DOT 4B, 4BA, 4BW, or 4E specification cylinder could result in a release of hazmat, which could in turn destroy property or cause environmental damage, PHMSA's incident data provides very few records indicating environmental damage resulting from cylinder incidents (of any type). Queried on April 30, 2020, to cover incidents occurring from 2000 to 2019, PHMSA's incident data provides only four cylinder incidents that indicate environmental damage.[20]

Alternative 2: Preferred Alternative

The Preferred Alternative amends the requalification period for DOT 4-series specification cylinders in non-corrosive gas service, which is expected to result in decreased regulatory and economic burden. PHMSA does not anticipate that increased cylinder failures will occur because PHMSA believes that prior standards were conservative, as represented by the long-standing use of this common cylinder type and the lack of related incidents referenced in 5800.1 incident reports. Additionally, the requirements in § 180.209(c)—as referenced in the No Action Alternative—would still apply. The change clarifies and broadens regulatory requalification periods, ensuring consistency with training programs developed within the industry.

Alternative 3: NPGA Alternative

If PHMSA were to select the NPGA Alternative, the initial and subsequent requalification periods for the volumetric expansion and proof pressure tests would be extended to 12 years. However, the existing safety record does not justify the proposed universal 12-year interval for proof pressure testing. Increased cylinder failures could occur. While both volumetric expansion and proof pressure tests can be used to meet the requirements in § 180.209(e), they are not equivalent testing measures as claimed by NPGA.

PHMSA has selected the Preferred Alternative. There are no anticipated significant impacts in the release of environmental pollutants under either the No Action or Preferred Alternative. However, fewer trips transporting cylinders for retest may result in minor reductions to air pollutants, including greenhouse gases.

4. Agencies Consulted

PHMSA has coordinated with the Federal Aviation Administration, the Federal Motor Carrier Safety Administration, the Federal Railroad Administration, and the U.S. Coast Guard in the development of this final rule.

5. Conclusion

PHMSA finds that no significant environmental impact will result from this final rule. PHMSA received no comments related to safety or environmental impacts that may result from the changes adopted in this rulemaking.

K. Privacy Act

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

L. Executive Order 13609 and International Trade Analysis

Under Executive Order 13609 (''Promoting International Regulatory Cooperation'')[21] agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements. This final rule does not impact international trade, and the amendments being adopted in this final rule do not preclude discussion with PHMSA's Canadian counterparts to align U.S. and Canadian cylinder requalification regulations more closely.

M. Executive Order 13211

Executive Order 13211 (''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'')[22] requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' Under the executive order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates, or is expected to lead to the promulgation of, a final rule or regulation (including a notice of inquiry, ANPRM, and NPRM) that (1)(i) is a significant regulatory action under Executive Order 12866 or any successor order and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. PHMSA received no comments related to energy impacts that may result from this final rule.

List of Subjects in 49 CFR Part 180

Hazardous materials transportation; Motor carriers; Motor vehicle safety; Packaging and containers; Railroad safety; Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA amends 49 CFR chapter I as follows:

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

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

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 2. In § 180.209, revise Table 1 in paragraph (a) and paragraph (e) to read as follows:

§ 180.209 Requirements for requalification of specification cylinders.

(a) * * *

[20] See 5800.1 incident reports I–2005030510, I–2008090269, I–2010050100, and I–2010050100, available to query at *https://www.phmsa.dot.gov/hazmat-program-management-data-and-statistics/data-operations/incident-statistics* (Hazmat Incident Report Search Tool). Hazmat incidents may be under-reported to PHMSA.

[21] 77 FR 26413 (Nov. 9, 2000).

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

TABLE 1 TO PARAGRAPH (a) —REQUALIFICATION OF CYLINDERS [1]

Specification under which cylinder was made	Minimum test pressure (psig) [2]	Requalification period (years)
3	3000 psig	5.
3A, 3AA	5/3 times service pressure, except non-corrosive service (*see* § 180.209(g)).	5, 10, or 12 (*see* § 180.209(b), (f), (h), and (j)).
3AL	5/3 times service pressure	5 or 12 (see § 180.209(j) and (m) [3]).
3AX, 3AAX	5/3 times service pressure	5.
3B, 3BN	2 times service pressure (*see* § 180.209(g))	5 or 10 (see § 180.209(f)).
3E	Test not required	
3HT	5/3 times service pressure	3 (*see* §§ 180.209(k) and 180.213(c)).
3T	5/3 times service pressure	5.
4AA480	2 times service pressure (*see* § 180.209(g))	5 or 10 (*see* § 180.209(h)).
4B, 4BA, 4BW, 4B–240ET	2 times service pressure, except non-corrosive service (*see* § 180.209(g)).	5, 7, 10, or 12 (*see* § 180.209(e), (f), and (j)).
4D, 4DA, 4DS	2 times service pressure	5.
4E	2 times service pressure, except non-corrosive service (*see* § 180.209(g)).	5, 10, or 12 (*see* § 180.209(e)).
4L	Test not required	
8, 8AL		10 or 20 (*see* § 180.209(i)).
Exemption or special permit cylinder	See current exemption or special permit	See current exemption or special permit.
Foreign cylinder (*see* § 173.301(j) of this subchapter for restrictions on use).	As marked on cylinder, but not less than 5/3 of any service or working pressure marking.	5 (*see* §§ 180.209(l) and 180.213(d)(2)).

[1] Any cylinder not exceeding 2 inches outside diameter and less than 2 feet in length is excepted from volumetric expansion test.
[2] For cylinders not marked with a service pressure, see § 173.301a(b) of this subchapter.
[3] This provision does not apply to cylinders used for carbon dioxide, fire extinguisher, or other industrial gas service.

* * * * *

(e) *Cylinders in non-corrosive gas service.* A cylinder made in conformance with DOT Specifications 4B, 4BA, 4BW, or 4E protected externally by a suitable corrosion-resistant coating and used exclusively for non-corrosive gas that is commercially free from corroding components may be requalified by volumetric expansion testing every 12 years instead of every 5 years. As an alternative, the cylinder may be subjected to a proof pressure test at least two times the marked service pressure, but this latter type of test must be repeated every 10 years after expiration of the initial 12-year period. When subjected to a proof pressure test, the cylinder must be carefully examined under test pressure and removed from service if a leak or defect is found.

* * * * *

Issued in Washington, DC, on October 6, 2020, under authority delegated in 49 CFR 1.97.

Howard R. Elliott,

Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2020–22483 Filed 10–29–20; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042–8884–02]

RTID 0648–XA598

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; quota transfer and fishery reopening.

SUMMARY: NMFS transfers 68.7 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the October through November 2020 General category subquota period and reopens the General category fishery for two days. This action is intended to provide a reasonable opportunity to harvest the full annual U.S. bluefin tuna quota without exceeding it, while maintaining an equitable distribution of fishing opportunities across time periods. This action applies to Atlantic tunas General category (commercial) permitted vessels and Atlantic Highly Migratory Species (HMS) Charter/Headboat category permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

DATES: The quota transfer is effective October 27, 2020, through November 30, 2020. The reopening is effective 12:30 a.m., local time, October 28, 2020, through 11:30 p.m., local time, October 29, 2020.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Nicholas Velseboer, 978–281–9260, or Larry Redd, 301–427–8503.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and amendments. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

The current baseline General and Reserve category quotas are 555.7 mt and 29.5 mt, respectively. See § 635.27(a). Each of the General category time periods (January, June through August, September, October through

November, and December) is allocated a ''subquota'' or portion of the annual General category quota. The baseline subquotas for each time period are as follows: 29.5 mt for January; 277.9 mt for June through August; 147.3 mt for September; 72.2 mt for October through November; and 28.9 mt for December. Any unused General category quota rolls forward from one time period to the next, and is available for use in subsequent time periods. To date, NMFS has taken several actions that resulted in adjustments to the General and Reserve category quotas, resulting in currently adjusted quotas of 88.7 mt of quota for the Reserve category, 100 mt for the General category January through March 2020 subquota period, and 9.4 mt for the December 2020 subquota period (85 FR 17, January 2, 2020; 85 FR 6828, February 6, 2020; 85 FR 43148, July 16, 2020; 85 FR 59445, September 22, 2020; and 85 FR 61872, October 1, 2020). Most recently, NMFS transferred 40 mt to the General category and closed the General category fishery effective October 9, 2020, based on projections that landings would meet or exceed the adjusted October through November subquota of 112.2 mt by that date (85 FR 64411, October 13, 2020). In that action, NMFS indicated it planned to account for General category overharvest from the September 2020 subquota period, as well as additional landings from the June through August period not previously accounted for in 85 FR 59445 (September 22, 2020), in a subsequent notice. Preliminary landings data as of October 21, 2020, indicate that the amount of overharvest (through September 30, 2020) that needs to be accounted for is 53.2 mt.

Transfer of 68.7 mt From the Reserve Category to the General Category

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories, after considering regulatory determination criteria provided under § 635.27(a)(8). NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota transfer. These considerations include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen and provided by bluefin tuna dealers continue to provide valuable data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT in the General category would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date (including during the fall and winter fisheries in the last several years), and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). Preliminary landings data as of October 26, 2020, indicate that the General category landed 88.5 mt for the October through November period. This represents 79 percent of the adjusted October through November subquota (112.2 mt), and means that 23.7 mt remains available (112.2 mt–88.5 mt). Transferring 68.7 mt of quota from the Reserve category accounts for 53.2 mt of accrued overharvest from the prior time periods and results in an additional 15.5 mt being available for the October through November 2020 subquota period, thus effectively providing limited additional opportunities to harvest the U.S. bluefin tuna quota while avoiding exceeding it.

Regarding the projected ability of the vessels fishing under the particular category quota (here, the General category) to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(8)(iii)), a portion of the transferred quota covers the 53.2-mt overharvest of the General category subquotas through September 30, 2020. NMFS anticipates that General category participants will be able to harvest the 39.2 mt of BFT quota that remains available for the October through November subquota (23.7 mt remaining + 15.5 mt from the transfer), following this action, by the end of the subquota time period, but this is also subject to weather conditions and BFT availability. In the unlikely event that any of this quota is unused by November 30, such quota will roll forward to the next subperiod within the calendar year (*i.e.,* the December period), and NMFS anticipates that it would be used before the end of the fishing year. Thus, this quota transfer would allow fishermen to take advantage of the availability of fish on the fishing grounds, and provide a reasonable opportunity to harvest the full U.S. BFT quota.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2020 landings and dead discards. In the last several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS will need to account for 2020 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that. NMFS anticipates that General category participants in all areas and time periods will have opportunities to harvest the General category quota in 2020, through active inseason management such as the timing of quota transfers, as practicable. Thus, this quota transfer would allow fishermen to take advantage of the availability of fish on the fishing grounds to the extent consistent with the available amount of transferrable quota and other management objectives, while avoiding quota exceedance.

NMFS also considered the effects of the adjustment on the BFT stock and the effects of the transfer on accomplishing the objectives of the FMP (§ 635.27(a)(8)(v) and (vi)). This transfer would be consistent with the current quotas, which were established and analyzed in the 2018 BFT quota final rule (83 FR 51391, October 11, 2018), and with objectives of the 2006 Consolidated HMS FMP and amendments and is not expected to negatively impact stock health or to affect the stock in ways not already analyzed in those documents. Another principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and amendments, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations (related to § 635.27(a)(8)(x)). Specific to the General category, this includes providing opportunity equitably across all time periods.

Based on the considerations above, NMFS is transferring 68.7 mt of the available 88.7 mt of Reserve category quota to the General category. Of this amount, 53.2 mt accounts for preliminary overharvest of the January through March, June through August, and September time period subquotas, and 15.5 mt is added to the October through November subquota. Therefore, NMFS adjusts the General category October through November subquota 2020 subquota to a total of 127.7 mt after accounting for the 53.2 mt of overharvest through for the prior 2020 time periods, and adjusts the Reserve category quota to 20 mt.

General Category Reopening

Based on early October landings rates, NMFS has determined that reopening the General category fishery for two days is appropriate given the amount of quota that remains available for October through November, following this action (*i.e.,* 39.2 mt).

Therefore, the General category fishery will reopen at 12:30 a.m., October 28, 2020, and close at 11:30 p.m., October 29, 2020. The General category daily retention limit during this reopening remains the same as prior to closing: One large medium or giant (*i.e.,* measuring 73 inches (185 cm) curved fork length or greater) bluefin tuna per vessel per day/trip. This action applies to Atlantic tunas General category (commercial) permitted vessels and HMS Charter/Headboat category permitted vessels with a commercial sale endorsement when fishing commercially for BFT. Retaining, possessing, or landing large medium or giant BFT by persons aboard vessels permitted in the General and HMS Charter/Headboat categories must cease at 11:30 p.m. local time on October 29, 2020.

The General category will automatically reopen December 1, 2020, for the December 2020 subquota time period at the default one-fish level. In January 2020, NMFS adjusted the General category base subquota for the December 2020 period to 9.4 mt (85 FR 17, January 2, 2020). Based on quota availability in the Reserve, NMFS may consider transferring additional quota to the December subquota period, as appropriate.

Fishermen may catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. All BFT that are released must be handled in a manner that will maximize their survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the ''Careful Catch and Release'' brochure available at *https://www.fisheries.noaa.gov/resource/outreach-and-education/careful-catch-and-release-brochure/.*

Monitoring and Reporting

NMFS will continue to monitor the BFT fisheries closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustment, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov,* using the HMS Catch Reporting app, or calling (888) 872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are necessary to ensure available subquotas are not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281–9260, or access *hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 635, which was issued pursuant to section 304(c), and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS finds that pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice of, and an opportunity for public comment on, for the following reasons: The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement the quota transfer is impracticable and contrary to the public interest. The General category recently closed, but based on available BFT quotas, fishery performance in recent weeks, and the availability of BFT on the fishing grounds, responsive reopening of the fishery is warranted to allow fishermen to take advantage of availability of fish and of quota. NMFS could not have proposed this action earlier, as it needed to consider and respond to updated data and information about fishery conditions and this year's landings. If NMFS was to offer a public comment period now, after having appropriately considered that data, it would preclude fishermen from harvesting BFT that are legally available. This action does not raise conservation and management concerns. Transferring quota from the Reserve category to the General category does not affect the overall U.S. BFT quota, and available data shows the adjustment would have a minimal risk of exceeding the ICCAT-allocated quota. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment criteria. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

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

Dated: October 27, 2020.

Jennifer M. Wallace,

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

[FR Doc. 2020–24107 Filed 10–27–20; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 211
Friday, October 30, 2020

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2020–0720; Notice No. 25–20–08–SC]

Special Conditions: The Boeing Company Model 787 Series Airplane; Seats With Pretensioner Restraint Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for The Boeing Company (Boeing) Model 787 series airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is pretensioner restraint systems installed on passenger seats. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send comments on or before December 4, 2020.

ADDRESSES: Send comments identified by Docket No. FAA–2020–0720 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (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: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478).

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to 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: Shannon Lennon, Airframe and Cabin Safety Section, AIR–675, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3209; email *shannon.lennon@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments. The FAA may change these special conditions based on the comments received.

Background

On November 8, 2018, Boeing applied for a change to Type Certificate No. T00021SE for pretensioner restraint systems installed on passenger seats in the Model 787 series airplane. This airplane is a twin-engine, transport-category airplane with passenger seating capacity of 420 and a maximum takeoff weight of 557,000 pounds.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Boeing must show that the Model 787 series airplane, as changed, continues to meet the applicable provisions of the regulations listed in Type Certificate No. T00021SE or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for Boeing Model 787 series airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 787 series airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Boeing Model 787 series airplane will incorporate the following novel or unusual design features:

Forward-facing seats incorporating a shoulder harness with pretensioner device, otherwise known as a

pretensioner restraint system, which is intended to protect the occupants from head injuries.

Discussion

Boeing will install, in the Model 787 series airplane, forward-facing seats that incorporate a shoulder harness with a pretensioner system at each seat place for head-injury protection.

Shoulder harnesses have been widely used on flight-attendant seats, flight-deck seats, in business jets, and in general-aviation airplanes to reduce occupant head injury in the event of an emergency landing. Special conditions, pertinent regulations, and published guidance exist that relate to other restraint systems. However, the use of pretensioners in the restraint system on transport-airplane seats is a novel design.

The pretensioner restraint system utilizes a retractor which eliminates slack in the shoulder harness and pulls the occupant back into the seat prior to impact. This has the effect of reducing forward translation of the occupant, reducing head arc, and reducing the loads in the shoulder harness.

Pretensioner technology involves a step-change in loading experienced by the occupant for impacts below and above that at which the device deploys, because activation of the shoulder harness, at the point at which the pretensioner engages, interrupts upper-torso excursion. This could result in the head injury criteria (HIC) being higher at an intermediate impact condition than that resulting from the maximum impact condition corresponding to the test conditions specified in § 25.562. See condition 1 in these special conditions.

The ideal triangular maximum-severity pulse is defined in Advisory Circular (AC) 25.562–1B, ''Dynamic Evaluation of Seat Restraint Systems and Occupant Protection on Transport Airplanes.'' For the evaluation and testing of less-severe pulses for purposes of assessing the effectiveness of the pretensioner setting, a similar triangular pulse should be used with acceleration, rise time, and velocity change scaled accordingly. The magnitude of the required pulse should not deviate below the ideal pulse by more than 0.5g until 1.33 t1 is reached, where t1 represents the time interval between 0 and t1 on the referenced pulse shape as shown in AC 25.562–1B. This is an acceptable method of compliance to the test requirements of the special conditions.

Additionally, the pretensioner might not provide protection, after actuation, during secondary impacts. Therefore, the case where a small impact is followed by a large impact should be addressed. If the minimum deceleration severity at which the pretensioner is set to deploy is unnecessarily low, the protection offered by the pretensioner may be lost by the time a second, larger impact occurs.

Conditions 1 through 4 ensure that the pretensioner system activates when intended, to provide the necessary protection of occupants. This includes protection of a range of occupants under various accident conditions. Conditions 5 through 10 address maintenance and reliability of the pretensioner system, including any outside influences on the mechanism, to ensure it functions as intended.

The proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 787 series airplane. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one model series of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

§ 25.562 Emergency landing dynamic conditions.

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Boeing Model 787 series airplane.

In addition to the requirements of § 25.562, forward-facing passenger seats with pretensioner restraint systems must meet the following:

1. Head Injury Criteria (HIC)

The HIC value must not exceed 1000 at any condition at which the pretensioner does or does not deploy, up to the maximum severity pulse that corresponds to the test conditions specified in § 25.562. Tests must be performed to demonstrate this, taking into account any necessary tolerances for deployment.

When an airbag device is present in addition to the pretensioner restraint system, and the anthropormorphic test device (ATD) has no apparent contact with the seat/structure but has contact with an airbag, a HIC unlimited scored in excess of 1000 is acceptable, provided the HIC15 score (calculated in accordance with 49 CFR 571.208) for that contact is less than 700.

ATD head contact with the seat or other structure, through the airbag, or contact subsequent to contact with the airbag, requires a HIC value that does not exceed 1000.

2. Protection During Secondary Impacts

The pretensioner activation setting must be demonstrated to maximize the probability of the protection being available when needed, considering secondary impacts.

3. Protection of Occupants Other Than 50th Percentile

Protection of occupants for a range of stature from a 2-year-old child to a 95th percentile male must be shown. For shoulder harnesses that include pretensioners, protection of occupants other than a 50th percentile male may be shown by test or analysis. In addition, the pretensioner must not introduce a hazard to passengers due to the following seating configurations:

a. The seat occupant is holding an infant.

b. The seat occupant is a child in a child-restraint device.

c. The seat occupant is a pregnant woman.

4. Occupants Adopting the Brace Position

Occupants in the traditional brace position when the pretensioner activates must not experience adverse effects from the pretensioner activation.

5. Inadvertent Pretensioner Actuation

a. The probability of inadvertent pretensioner actuation must be shown to be extremely remote (*i.e.,* average probability per flight hour of less than 10^{-7}).

b. The system must be shown to be not susceptible to inadvertent pretensioner actuation as a result of wear and tear, nor inertia loads resulting from in-flight or ground maneuvers likely to be experienced in service.

c. The seated occupant must not be seriously injured as a result of inadvertent pretensioner actuation.

d. Inadvertent pretensioner actuation must not cause a hazard to the airplane, nor cause serious injury to anyone who may be positioned close to the retractor or belt (*e.g.,* seated in an adjacent seat or standing adjacent to the seat).

6. Availability of the Pretensioner Function Prior To Flight

The design must provide means for a crewmember to verify the availability of the pretensioner function prior to each flight, or the probability of failure of the pretensioner function must be demonstrated to be extremely remote (*i.e.,* average probability per flight hour of less than 10^{-7}) between inspection intervals.

7. Incorrect Seat Belt Orientation

The system design must ensure that any incorrect orientation (twisting) of the seat belt does not compromise the pretensioner protection function.

8. Contamination Protection

The pretensioner mechanisms and controls must be protected from external contamination associated with that which could occur on or around passenger seating.

9. Prevention of Hazards

The pretensioner system must not induce a hazard to passengers in case of fire, nor create a fire hazard, if activated.

10. Functionality After Loss of Power

The system must function properly after loss of normal airplane electrical power, and after a transverse separation in the fuselage at the most critical location. A separation at the location of the system does not have to be considered.

Issued in Des Moines, Washington, on October 14, 2020.

James E. Wilborn,

Acting Manager, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2020–23153 Filed 10–29–20; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2020–0024]

16 CFR Part 1632

Standard for the Flammability of Mattresses and Mattress Pads; Proposed Amendment

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Consumer Product Safety Commission (Commission, or CPSC) is proposing to amend its Standard for the Flammability of Mattresses and Mattress Pads. The ignition source cigarette specified in the standard for use in the mattress standard's performance tests, Standard Reference Material cigarette SRM 1196, is no longer available for purchase. The Commission is proposing to amend the mattress standard to require a revised Standard Reference Material cigarette, SRM 1196a, which was developed by the National Institute of Standards and Technology, as the ignition source for testing to the mattress standard.

DATES: Comments on the proposal should be submitted no later than January 13, 2021.

ADDRESSES: Comments, identified by Docket No. CPSC–2020–0024, may be submitted electronically or in writing:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. The CPSC does not accept comments submitted by electronic mail (email), except through *https://www.regulations.gov.* The CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/hand delivery/courier Written Submissions: Submit comments by mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504–7479; email: *amills@cpsc.gov.*

Instructions: All submissions must include the agency name and docket number for this proposed rule. CPSC may post all comments received without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov.* Do not submit electronically: 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 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–2020–0024, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Lisa Scott, Directorate for Laboratory Sciences, Office of Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: 301–987–2064; email: *lscott@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

1. The Standard

The Standard for the Flammability of Mattresses and Mattress Pads (Standard), 16 CFR part 1632, issued pursuant to the Flammable Fabrics Act (FFA), 15 U.S.C. 1191 *et seq.,* sets forth a test to determine the ignition resistance of a mattress or mattress pad when exposed to a lighted cigarette. Lighted cigarettes are placed at specified locations on the surface of a mattress or mattress pad. The Standard establishes pass/fail criteria for the tests. The Standard currently specifies the ignition source for these tests as Standard Reference Material cigarette SRM 1196, available for purchase from the National Institute of Standards and Technology (NIST). *See* 16 CFR 1632.4(a)(2).

2. Development of the Original Standard Reference Material Cigarette

The original specification for the Standard's ignition source included physical characteristics of a conventional, commercially available, non-filtered, king-sized cigarette. Although no specific brand was identified in the standard, a Pall Mall Red cigarette, manufactured by R.J. Reynolds Tobacco Company (RJR), was commonly known to meet the specifications. In early 2008, RJR notified CPSC that the company intended to convert its production of Pall Mall Red cigarettes to be Fire Standard Compliant (FSC).

In 2008, CPSC sought to find an alternate ignition source and contracted with NIST to develop an ignition source with an ignition strength equivalent to the conventional Pall Mall Red cigarette. The ignition strength value is on a scale from 0 to 100 and is analogous to the percentage of full-length burns on a laboratory substrate. Lower values indicate a cigarette is more likely to self-extinguish when not actively being smoked, while higher values indicate a cigarette is more likely to remain lit while unattended. The Pall Mall Red ignition strength varied by vintage from a measured low of 35 to a high of 95, most often falling at the higher end of the range. FSC cigarettes are required to have an ignition strength lower than 25 and in practice are often much weaker to ensure uniform compliance.

In 2010, NIST developed SRM 1196, *Standard Cigarette for Ignition*

Resistance Testing. SRM 1196 was available for purchase starting in September 2010. On November 1, 2010, CPSC proposed the use of the SRM 1196 cigarette as the standard ignition source. 75 FR 67047. On September 23, 2011, CPSC issued a final rule amending the Standard to specify SRM 1196 as the standard ignition source, which became effective on September 23, 2012. 76 FR 59014.

3. Development of a New Standard Reference Material Cigarette

All of the SRM 1196 cigarettes were produced in one production run in 2010, with a supply estimated to last approximately 10 years. NIST staff made several attempts to procure a new batch of SRM 1196 cigarettes as the supply dwindled, but in late 2018, the supply of SRM 1196 was depleted before NIST was able to complete a new procurement. NIST was unable to find a manufacturer to produce additional SRM 1196 cigarettes. However, NIST successfully procured SRM 1196a as a replacement for SRM 1196.

NIST conducted tests to determine whether the SRM 1196 properties were replicated in the new SRM 1196a. NIST evaluated the suitability of SRM 1196a by examining the cigarette's ignition strength, tobacco column length and mass, use of unbanded paper, and absence of a filter. Tobacco column length is the length of the cigarette that contains tobacco. Banded paper contains bands that slow the cigarette's combustion when not actively being smoked, while unbanded paper does not contain these bands. NIST affirmed that these SRM 1196 properties were replicated in the new SRM 1196a, because it has a similar ignition strength, tobacco column length and mass, it uses unbanded paper, and it has no filter. NIST began selling SRM 1196a in February 2020.

4. CPSC Staff Evaluation of SRM 1196a [1]

CPSC staff evaluated SRM 1196a in a pilot study and then a full-scale study to determine whether it is a comparable, safety-neutral replacement for SRM 1196.

CPSC staff conducted an initial pilot study in late 2019 to evaluate the suitability of SRM 1196a as a substitute for SRM 1196. The goal of the pilot study was to ensure the full-scale study met statistically robust and scientifically meaningful criteria. Staff evaluated the confidence interval and margin of error to utilize in the full-scale study, based on an examination of the 2010 transition from the original ignition source to SRM 1196, CPSC compliance data, and the number of test replicates required by the Standard. Based on this analysis and testing during the pilot study, staff subject matter experts determined that a 90 percent confidence interval and equivalence margin of 35 percent were appropriate.

CPSC staff then conducted a full-scale study in early 2020 to determine whether there is statistical equivalence between SRM 1196 and SRM 1196a. In the full-scale study, staff evaluated both SRM 1196 and SRM 1196a and found statistically equivalent char length pass/fail patterns for all tested mattress substrates. Test results were within a 90 percent confidence interval and equivalence margin of 35 percent. Staff noted that NIST certified the ignition strengths of both SRMs to be comparable based on a 95 percent confidence interval with a 5 percent margin in laboratory testing. While the bounds found by CPSC staff are larger than the NIST confidence interval, staff determined that the NIST tests only examined the cigarette characteristics on substrates which have little variability. The CPSC testing included representative mattress materials that are inherently more variable than the benchmark substrates in the NIST cigarette tests. Furthermore, staff analysis of both SRM cigarettes found that the physical dimensions of SRM 1196 and SRM 1196a are nearly identical. Based on the evidence provided by the full-scale study, pilot study, and NIST certification, as well as examination of CPSC compliance data and data from the 2010 transition from the original ignition source to SRM 1196, CPSC staff's review showed that SRM 1196a cigarettes are statistically equivalent to SRM 1196. On these bases, the Commission finds that SRM 1196a is a comparable, safety-neutral replacement for SRM 1196.

B. Statutory Provisions

The FFA sets forth the process by which the Commission can issue or amend a flammability standard. In accordance with those provisions, the Commission is proposing to amend the Standard to specify the SRM 1196a cigarette developed by NIST as the ignition source to be used for testing under the Standard. As required by the FFA, the proposed rule contains the text of the amendment, alternatives that the Commission has considered, and a preliminary regulatory analysis. 15 U.S.C. 1193(i). Before issuing a final rule, the Commission must prepare a final regulatory analysis and make certain findings concerning any relevant voluntary standard, the relationship of costs and benefits of the rule, and the burden imposed by the regulation. *Id.* 1193(j). In addition, the Commission must find that the standard: (1) Is needed to adequately protect the public against the risk of the occurrence of fire leading to death, injury, or significant property damage; (2) is reasonable, technologically practicable, and appropriate; (3) is limited to fabrics, related materials, or products which present unreasonable risks; and (4) is stated in objective terms. *Id.* 1193(b).

The Commission also must provide an opportunity for interested persons to make an oral presentation concerning the rulemaking before the Commission may issue a final rule. *Id.* 1193(d). The Commission requests that anyone who would like to make an oral presentation concerning this rulemaking please contact the Commission's Division of the Secretariat (see the **ADDRESSES** section of this proposed rule) within 45 days of publication of this proposed rule. If the Commission receives requests to make oral comments, a date will be set for a public meeting via webinar for that purpose, and notice of the meeting will be provided in the **Federal Register**.

C. Description of the Proposed Amendment

Currently, the Standard requires that the ignition source for testing mattresses ''shall be a Standard Reference Material cigarette (SRM 1196), available for purchase from the National Institute of Standards and Technology. . . .'' 16 CFR 1632.4(a)(2). CPSC now proposes to amend the Standard to require the use of SRM 1196a instead of SRM 1196.

D. Preliminary Regulatory Analysis

Section 4(i) of the FFA requires that the Commission prepare a preliminary regulatory analysis when it proposes to issue or amend a flammability standard under the FFA and that this analysis be published with the proposed rule. 15 U.S.C. 1193(i). CPSC staff conducted this analysis to assess the regulatory impact of the proposed amendment.

1. Market/Industry Information

The size of the U.S. mattress market increased from $17.4 billion in 2018 to $18.1 billion in 2019. Roughly 23.6 million mattress units shipped in 2018. Approximately 29 percent (6.8 million) of units shipped were imported products.

[1] Staff Briefing Package, Proposed Amendment to 16 CFR part 1632 Standard for the Flammability of Mattresses and Mattress Pads, is available at *https://www.cpsc.gov/s3fs-public/NPR-Standard-for-the-Flammability-of-Mattresses-and-Mattress-Pads-Proposed-Amendment.pdf?POASWvZmX8ZwwU1OIoDjE9CDMRCHPaGA.*

Three industry sectors supply Mattresses and Mattress Pads to the U.S. Market, categorized under the North American Industry Classification System (NAICS): NAICS Sector 337910—Mattress Manufacturing, NAICS Sector 314120—Curtain and Linen Mills, and NAICS Sector 423210—Furniture and Merchant Wholesalers.

The Mattress Manufacturing Sector (337910) includes establishments primarily engaged in manufacturing innerspring, box spring, and non-innerspring mattresses. The Curtain and Linen Mills Sector (314120) comprises establishments primarily engaged in manufacturing household linens, bedspreads, sheets, tablecloths, towels, and shower curtains, from purchased materials. This sector includes mattress pad and mattress protector manufacturing. The Furniture and Merchant Wholesalers Sector (423210) is primarily engaged in the merchant wholesale distribution of furniture, except hospital beds and medical furniture. Importers of mattresses are typically categorized under NAICS code 423210.

According to the Small Business Administration (SBA), a firm in the Mattress Manufacturing sector (NAICS sector 337910) can be defined as ''small'' if the firm employs fewer than 1,000 workers. Under this definition, among the 250 firms identified by staff in the sector, 240 are small businesses that supply mattress products. The SBA defines a firm within the Curtain and Linen Mills Sector (NAICS sector 314120) as small if the firm employs fewer than 750 workers. Under this definition, among the 20 firms identified by staff, 19 firms are small and currently supply mattress products to the U.S. mattress market. Finally, a firm in the Furniture and Merchant Wholesale Sector (NAICS sector 423210) is defined as small if the firm employs fewer than 100 workers. All of the 88 firms staff identified in this sector meet this definition of small. Under SBA-provided definitions, staff finds the majority of firms supplying the U.S. market for mattresses and mattress pads are small businesses.

2. The Mattress Standard

The mattress standard at 16 CFR part 1632 requires premarket, full-scale prototype testing for each new mattress design. Prototype testing also must be performed for each change in materials of an existing design that may affect cigarette ignition resistance.

Under the Standard, four defined test procedures require the use of an SRM ignition source: The mattress test procedure, the mattress pad test procedure, the ticking classification test procedure, and the tape edge substitution test procedure. The number of test cigarettes required by these test procedures range from 18 SRM test cigarettes consumed during the ticking classification test, to 108 SRM test cigarettes consumed during the mattress or mattress pad test procedures. Furthermore, under the Standard only SRM test cigarettes from unopened packages can be selected for a series of tests, and if a cigarette extinguishes before burning its full length on any mattress surface location, the test must be repeated with a freshly lit cigarette. Therefore, mattress and mattress pad test procedures require, in practice, 6 packs of SRM cigarettes, the ticking classification test procedure requires in practice 1 pack of SRM cigarettes, and the tape edge substitution test requires, at a minimum, 2 packs of SRM cigarettes.

SRM 1196a is available for purchase from NIST at a minimum order of 2 cartons. A carton contains 10 packs, and each pack contains 20 cigarettes; therefore, two cartons from NIST will contain 400 SRM cigarettes. Based on information collected by staff from a selection of domestic third-party testing facilities, a third-party testing facility uses an average of 10 to 40 packs of SRM cigarettes (or between 200–800 test cigarettes) per month. These data provide insight into the number of tests cigarettes used by third party testing facilities located in the United States, as an order of magnitude. A testing facility that uses 400 test cigarettes per month would need to purchase two cartons of SRM cigarettes from NIST every month.

3. Potential Benefits and Costs

The SRM cigarette described in the proposal would have approximately the same ignition strength characteristics as originally intended by the Standard. The use of SRM 1196a cigarettes would not change the flammability performance tests or test method required under the Standard.

a. Potential Benefits

The proposed amendment is ''safety-neutral,'' so mattresses that passed or failed under the existing Standard would be expected to generate similar results when SRM 1196a is used. The level of protection provided by the Standard would neither increase nor decrease as a result of the change from SRM 1196 to SRM 1196a. Thus, there would be no impact on the level or value of fire safety benefits derived from the 16 CFR part 1632 Standard.

Because NIST has exhausted its supply of SRM 1196, adopting the proposed amendment to require the use of SRM 1196a will allow firms access to an ignition source that would permit them to continue testing mattresses and mattress pads to the Standard. The proposed amendment would thus provide significant benefits to firms, since failing to adopt this amendment would mean that the Standard would require firms to test using an ignition source that is no longer available for purchase.

As an interim measure in 2018, when NIST's stock of SRM 1196 cigarettes was depleted, CPSC's Office of Compliance issued guidance stating that testing to the Standard could be completed with commercial king-size, non-filtered FSC cigarettes. CPSC's Office of Compliance amended its Interim Enforcement Policy guidance, effective September 2020, to allow testing with either reserved stock of SRM 1196 or new stock of SRM 1196a. Accordingly, testing with FSC cigarettes to the Standard is no longer permitted. The Commission welcomes comments concerning whether any entity has a stockpile of SRM 1196 cigarettes and whether the Commission should continue to allow the use of SRM 1196 cigarettes as an ignition source under the Standard.

SRM cigarettes provide a common ignition source for all laboratories, while commercially available FSC cigarettes do not offer that consistency. The ignition strength of FSC cigarettes vary from one brand to another. Because FSC cigarettes are required to have an ignition strength lower than 25 and are often much weaker, FSC cigarettes would have an ignition strength substantially lower than SRM 1196a. As a result, compliance test results would vary between a test conducted with one brand of FSC cigarette and another, making testing, reporting, and enforcement inconsistent and unreliable.

Furthermore, FSC cigarettes are intended to self-extinguish when left unattended. Under the Standard, results from a cigarette that does not burn its full length are not accepted. Any cigarette which extinguishes before burning its full length on any mattress surface location must be retested with a freshly lit cigarette. As a result, use of the FSC cigarette as the replacement ignition source would likely lead to an increase in the average number of cigarettes used for each complete test. FSC cigarettes would likely self-extinguish, requiring multiple freshly lit cigarettes to complete a test, thereby increasing the costs of testing and time burdens associated with testing.

In contrast to the inconsistency and unreliability of FSC cigarettes, the replacement SRM 1196a is a statistically equivalent replacement for SRM 1196, and would reduce the need for retesting and lighting fresh FSC cigarettes. Furthermore, SRM 1196a allows for consistency in reporting and testing between laboratories. The proposed amendment specifying SRM 1196a as a replacement cigarette would achieve consistency and prevent uncertainty for industry, testing laboratories, and CPSC.

b. Potential Costs

The cost increase associated with the proposed amendment is related to the SRM test cigarettes used as the ignition source for testing. Prices for SRM 1196a are set by NIST. SRM 1196a is available for purchase from NIST at a minimum order of 2 cartons, at a cost of $400, plus shipping. A carton contains 10 packs, and each pack contains 20 cigarettes; therefore, two cartons from NIST will contain 400 SRM cigarettes. The price charged for SRM 1196a is approximately 74 percent higher than the price for SRM 1196. The price charged by NIST for SRM 1196 had been $230 for 2 cartons of test material (20 packs of cigarettes), plus shipping.

If SRM 1196a is adopted as the replacement for SRM 1196, manufacturers and importers of mattresses would be responsible for ensuring that their mattress products are tested using SRM 1196a. If a supplier's mattress product does not comply with the requirements, they will need to either modify the product, or cease their manufacture or importation. Additionally, as required by the CPSIA and its implementing regulations, manufacturers and importers of youth mattresses would be required to certify that their mattresses intended for children comply with the requirements of the Standard. Many domestic manufacturers of youth mattresses are small entities as defined by SBA. The following analysis reviews some of the possible impacts using SRM 1196a in the Standard.

The annual cost of adopting the SRM 1196a test cigarette will vary among small firms. Different firms offer a variety of mattress products and have different operational procedures for mattress product development and testing. Among other considerations, the number of mattresses produced annually by small firms is not uniform. Furthermore, some firms perform testing procedures in-house, while others elect or are required to have testing performed by a CPSC-approved conformity assessment body. The number of new prototypes that a firm will bring to market, and the size of a production run by a small firm, is up to the firm to decide; but the cost per firm of the proposed amendment would be impacted by these individual decisions.

Staff has reviewed a variety of likely cost increases that may be faced by small firms in adopting SRM 1196a, in three separate testing scenarios. The Commission welcomes comments on the number and types of tests performed by firms on a monthly (or annual) basis. The Commission also welcomes comments from small firms on estimates of the number of SRM test cigarettes they use on a monthly (or annual) basis.

To determine the likely costs faced by small firms from use of SRM 1196a cigarettes, staff analyzed testing costs related to the Standard in a manner that is consistent with past economic analysis of the industry. The analysis uses commercial data published online for mattress manufacturing, bedding manufacturing, and wholesale mattress product importers acquired from Dun and Bradstreet. Staff has also reviewed current mattress products available on the market from a variety of small domestic suppliers and has received input from industry on the type and frequency of testing performed by industry under the Standard. Based on all of the information that staff has analyzed, staff has determined that the following three scenarios represent a likely range of costs incurred by small firms.

Scenario 1

A small firm produces on average 20 new mattress models per year. Five of these new mattress models are new prototypes, and 14 models are made with new ticking substitutions. The one remaining model requires a tape edge substitution test. Such a firm would consume 46 packs of test cigarettes annually.

(5 mattress tests × 6 packs + 14 ticking tests × 1 pack + 1 tape substitution test × 2 packs = 30 packs + 14 packs + 2 packs = 46 packs)

Scenario 2

A small firm produces on average 5 new mattress models per year. Two of these new mattress models are new prototypes, and the remaining three models are made with new ticking substitutions. Such a firm would consume 15 packs of test cigarettes annually.

(2 mattress tests × 6 packs + 3 ticking tests × 1 pack = 12 packs + 3 packs = 15 packs)

Scenario 3

A small firm produces on average 3 new mattress models per year. Each mattress model is sold with a protective mattress pad, intended for use with a crib mattress in a standard-size crib. Such a firm would consume 36 packs of test cigarettes annually.

(3 mattress tests × 6 packs + 3 mattress pad tests × 6 packs = 18 packs + 18 packs = 36 packs)

As noted, the cost of SRM 1196a is about 74 percent higher than that of SRM 1196. Not accounting for shipping costs, a pack of SRM 1196 costs the firm approximately $11.50, while SRM 1196a costs the firm $20. Using the cost of SRM 1196 and SRM 1196a, we can calculate the cost increase faced by firms under the three scenarios above:

- In scenario 1, the firm with 20 new models using 46 test cigarette packs annually would incur increased costs of $391, from $529 annually (46 packs × $11.50 per pack = $529) to $920 annually (46 packs × $20 per pack = $920).
- In scenario 2, the firm with five new models using 15 test cigarette packs annually would incur increased costs of $127.50, from $172.50 annually (15 packs × $11.50 per pack = $172.50) to $300 annually (15 packs × $20 per pack = $300).
- In scenario 3, the firm with 3 new mattress models and 3 new mattress pad models using 36 packs annually would incur increased costs of $306, from $414 annually (36 packs × $11.50 per pack = $414) to $720 annually (36 packs × $20 per pack = $720).

Staff finds the effective increase in the price per pack charged by NIST from $11.50 to $20 ranges from roughly $127.50 to $391 per year, among small firms in the above scenarios. Therefore, this is roughly the cost increase that small firms may face if SRM 1196a is adopted as the replacement reference material. The cost to a small firm would vary depending on the testing scenario.

The number of new prototypes that a small firm will bring to market is up to the individual firm to decide, but the cost per firm of the proposed amendment would be impacted by these individual business decisions. The small firm may choose to make new prototypes every year and bring them to market, or it may elect to substitute ticking and modify existing models of mattress products that are selling well or are customer favorites.

In summary, the proposed amendment to specify the SRM 1196a cigarette is not expected to have a significant impact on expected benefits or costs of the Standard in 16 CFR part 1632. Both the expected benefits and likely economic costs of the amendment are small, and the likely effect on testing costs per new prototype mattress or ticking substitution would be minor, especially when the projected cost is allocated over a production run of complying mattresses.

4. Regulatory Alternatives

The Commission could consider two basic alternatives to the proposed amendment: (1) Allow for the use of

FSC cigarettes as the ignition source; or (2) take no action on the smoldering ignition source issue.

Neither the proposed amendment nor alternative one would likely have a substantial economic impact. There would, however, be some relative differences in terms of resource costs and potential effects on the level of benefits the Standard affords. Alternative two would impose a significant economic impact, as it would require firms to use an ignition source that is no longer available, effectively making it impossible for firms to comply with the Standard. The advantages and disadvantages of these two basic alternatives are discussed below.

a. Allow for the Use of FSC Cigarettes

Under the first alternative, manufacturers and testers could conduct tests with any available FSC cigarettes.

A possible advantage of the Commission taking this alternative action is that some of the projected minor increase in resource costs of testing would not be incurred, since FSC cigarettes are less expensive than SRM 1196a. As noted, however, firms would likely have to use many more FSC cigarettes than SRM 1196a cigarettes due to the likelihood that FSC cigarettes would extinguish before testing is complete.

Disadvantages of the Commission taking this action include an increase in test result variability due to differences in cigarettes. Tests would be less reliable and results would vary depending on which cigarette was used. This would create uncertainty and confusion surrounding the reliability of tests for compliance with 16 CFR part 1632. Manufacturers and testing firms would have to conduct tests that are either wasteful (in terms of extra cigarettes required to complete a test due to cigarettes prematurely extinguishing) or have irreproducible and unreliable results.

b. No Action

If the CPSC took no action, firms would be required to use an ignition source that is no longer available for purchase. Firms would be unable to comply with the Standard.

In summary, there are no readily available or technically feasible alternatives to the proposed amendment that would have lower estimated costs and still address the need for a consistent ignition source that retains the ''safety-neutral'' approach of the proposed amendment.

E. Regulatory Flexibility Act Certification

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* an agency that engages in rulemaking generally must prepare initial and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. Section 605 of the RFA provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The proposed rule would retain the current mattress test procedure, but require that entities performing cigarette ignition tests (including the CPSC, other state agencies, and industry testing organizations) purchase and use SRM 1196a cigarettes at a higher cost than the price at which SRM 1196 cigarettes had been sold. No additional actions would be required of small entities. The costs associated with the proposed rule would essentially be borne by mattress manufacturers and importers that perform (or pay fees for) compliance testing.

All of the suppliers of mattress products to the U.S. market identified by staff are domestic firms. We limit our analysis to domestic firms because U.S. Small Business Administration (SBA) guidelines pertain to U.S.-based entities.

To determine whether a regulatory flexibility analysis or a certification statement of no significant impact on a substantial number of small entities is appropriate for a proposed rule, staff determines a threshold for ''no significant economic impact.'' The SBA provides leeway in determining the threshold and provides several varied examples of screening measures, including the one percent of gross revenue measure. Staff has chosen the gross revenue calculation because we have data to support its calculation.

For each market segment, staff is able to demonstrate that the proposed rule would impose an economic impact of less than 1 percent of gross revenue for the affected firms. Therefore, staff recommends certification for the rule. The following analysis provides the basis for this conclusion.

1. Small Mattress Manufacturers

Staff identified 240 firms in the Mattress Manufacturing Sector that meet SBA size standards for small business. Among small mattress manufacturing firms, 220 firms employed fewer than 100 workers. Across small firms in the Mattress Manufacturing sector, staff found annual revenue averaged $10.49 million.

The lowest reported annual revenue for any small domestic firm in this mattress product supplying sector was $128,000. One percent of annual revenue for the firm is $1,280 ($128,000 × 1 percent). Therefore, for this small domestic supplier, any increase in cost that exceeds $1,280 should be considered significant.

Estimating a cost increase of $391, the high end estimated cost of incorporating SRM 1196a into the Standard, the increase would amount to less than 1 percent of annual revenue, $1,280, and would not be considered significant.

2. Small Textile Manufacturers

Staff identified 19 firms in the Textile Manufacturing Sector that meet SBA size standards for small business. Among small textile manufacturing firms, 14 firms employed fewer than 20 workers. Across small firms in the Textile Manufacturing sector, staff found annual revenue averaged $2.83 million.

The lowest reported annual revenue for any small domestic firm in this mattress product supplying sector was $200,000. One percent of annual revenue for the firm is $2,000 ($200,000 × 1 percent). Therefore, for this small domestic supplier, any increase in cost that exceeds $2,000 should be considered significant.

Estimating a cost increase of $391, the high end estimated cost of incorporating SRM 1196a into the Standard, the increase would amount to less than 1 percent of annual revenue, $2,000, and could not be considered significant.

3. Small Importers

Staff identified 88 firms in the Mattress Wholesale Sector that meet SBA size standards for small business. Among small wholesale importers of mattress products, 72 firms employed fewer than 20 workers. Across small firms in the Mattress Wholesale sector, staff found annual sales averaged $7.84 million.

The lowest reported annual revenue for any small domestic firm in this mattress product supplying sector was $322,000. One percent of annual revenue for the firm is $3,220 ($322,000 × 1 percent). Therefore, for this small domestic supplier, any increase in cost that exceeds $3,220 should be considered significant.

Estimating a cost increase of $391, the high end estimated cost of incorporating SRM 1196a into the Standard, the increase would amount to less than 1 percent of annual revenue, $3,220, and could not be considered significant.

4. Conclusion

Based on this information, the proposal would have little or no effect on small producers because the design and construction of existing, compliant mattress products would remain unchanged and because the resource cost increase of using SRM 1196a cigarettes would represent a minimal increase in total testing costs. Thus, the Commission preliminarily concludes that the proposed rule would not have a significant impact on a substantial number of small businesses or other small entities.

F. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the proposed rule.

The Commission's regulations state that amendments to rules providing performance requirements for consumer products normally have little or no potential for affecting the human environment. 16 CFR 1021.5(c)(1). Nothing in this proposed rule alters that expectation. Therefore, because the proposed amendment would have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

G. Executive Orders

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations. The proposed rule, if finalized, would modify a flammability standard issued under the FFA. With certain exceptions that are not applicable in this instance, no state or political subdivision of a state may enact or continue in effect ''a flammability standard or other regulation'' applicable to the same fabric or product covered by an FFA standard if the state or local flammability standard or other regulations is ''designed to protect against the same risk of the occurrence fire'' unless the state or local flammability standard or regulation ''is identical'' to the FFA standard. *See* 15 U.S.C. 1476(a). The proposed rule would not alter the preemptive effect of the existing mattress standard.

Thus, the proposed rule would preempt nonidentical state or local flammability standards for mattresses or mattress pads designed to protect against the same risk of the occurrence of fire.

H. Effective Date

Section 4(b) of the FFA (15 U.S.C. 1193(b)) provides that an amendment of a flammability standard shall become effective one year from the date it is promulgated, unless the Commission finds for good cause that an earlier or later effective date is in the public interest, and the Commission publishes the reason for that finding. Section 4(b) of the FFA also requires that an amendment of a flammability standard shall exempt products ''in inventory or with the trade'' on the date the amendment becomes effective, unless the Commission limits or withdraws that exemption because those products are so highly flammable that they are dangerous when used by consumers for the purpose for which they are intended. The Commission believes that an effective date of thirty days would give adequate notice to all interested persons for firms to obtain SRM 1196a cigarettes from NIST. The purpose of this amendment is to allow manufacturers to replace SRM 1196 cigarettes which are no longer available. Accordingly, manufacturers are already purchasing SRM 1196a cigarettes as the SRM 1196 stock is depleted. Therefore, the Commission proposes that the amendment to the ignition source provision of the standard would become effective 30 days after publication of a final amendment in the **Federal Register**. The Commission seeks comment on the proposed effective date.

I. Proposed Findings

Section 4(a) and (j)(2) of the FFA require the Commission to make certain findings when it issues or amends a flammability standard. The Commission must find that the standard or amendment: (1) Is needed to adequately protect the public against the risk of the occurrence of fire leading to death, injury, or significant property damage; (2) is reasonable, technologically practicable, and appropriate; (3) is limited to fabrics, related materials, or products which present unreasonable risks; and (4) is stated in objective terms. 15 U.S.C. 1193(b). In addition, the Commission must find that: (1) If an applicable voluntary standard has been adopted and implemented, that compliance with the voluntary standard is not likely to adequately reduce the risk of injury, or compliance with the voluntary standard is not likely to be substantial; (2) that benefits expected from the regulation bear a reasonable relationship to its costs; and (3) that the regulation imposes the least burdensome alternative that would adequately reduce the risk of injury. Because section 4(a) of the FFA refers to proceedings for the determination of an appropriate flammability standard ''or other regulation or amendment,'' and because this proposed rule would be an amendment rather than a new flammability standard, for purposes of this section of the preamble, we will refer to the proposed rule as a ''proposed amendment.'' These findings are discussed below.

The amendment to the Standard is needed to adequately protect the public against unreasonable risk of the occurrence of fire. The current Standard specifies as the ignition source cigarettes that are no longer being produced. In order for the Standard to continue to be effective (and for labs to test mattresses and mattress pads to determine whether they comply with the Standard), it is necessary to change the ignition source specification. Changing the ignition source to SRM 1196a, rather than FSC cigarettes, will ensure that testing is reliable and that results will not vary from one lab or manufacturer to another. Such variation would be likely if labs or manufacturers were able to use different ignition sources that have similar physical properties but different burning characteristics.

The amendment to the Standard is reasonable, technologically practicable, and appropriate. The proposed amendment is based on technical research conducted by NIST and CPSC staff, which established that the SRM 1196a cigarette is capable of providing reliable and reproducible results in flammability testing of mattresses and mattress pads. The proposed SRM 1196a ignition source represents an equivalent, safety-neutral ignition source for use in testing to establish compliance with the Standard.

The amendment to the Standard is limited to fabrics, related materials, and products that present an unreasonable risk. The proposed amendment would continue to apply to the same products as the existing Standard.

Voluntary standards. There is no applicable voluntary standard for mattresses. The proposal would amend an existing federal mandatory standard.

Relationship of benefits to costs. Amending the Standard to specify SRM 1196a cigarettes as the ignition source would allow testing to the Standard to continue without interruption, would maintain the effectiveness of the Standard, and would not significantly increase testing costs to manufacturers and importers of mattresses and mattress pads. Thus, there is a reasonable relationship between benefits and costs of the proposed

amendment. Both expected benefits and costs of the proposed amendment are likely to be small. The likely effect on testing costs would be minor.

Least burdensome requirement. No other alternative would allow the Standard's level of safety and effectiveness to continue. Thus, the proposed amendment imposes the least burdensome requirement that would adequately address the risk of injury.

J. Conclusion

For the reasons discussed above, the Commission preliminarily finds that amending the mattress flammability standard (16 CFR part 1632) to specify SRM 1196a cigarettes as the ignition source is needed to adequately protect the public against the unreasonable risk of the occurrence of fire leading to death, injury, and significant property damage. The Commission also preliminarily finds that the amendment to the Standard is reasonable, technologically practicable, and appropriate. The Commission further finds that the amendment is limited to the fabrics, related materials, and products that present such unreasonable risks.

List of Subjects in 16 CFR Part 1632

Consumer protection, Flammable materials, Labeling, Mattresses and mattress pads, Records, Textiles, Warranties.

For the reasons given above, the Commission proposes to amend 16 CFR part 1632 as follows:

PART 1632—STANDARD FOR THE FLAMMABILITY OF MATTRESSES AND MATTRESS PADS (FF 4–72, AMENDED)

■ 1. The authority citation for part 1632 continues to read as follows:

Authority: 15 U.S.C. 1193, 1194; 15 U.S.C. 2079(b).

■ 2. Revise § 1632.4(a)(2) to read as follows:

§ 1632.4 Mattress test procedure.

(a) * * *

(2) *Ignition source.* The ignition source shall be a Standard Reference Material cigarette (SRM 1196a), available for purchase from the National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899.

* * * * *

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM19–20–000]

WECC Regional Reliability Standard BAL–002–WECC–3 (Contingency Reserve)

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to approve regional Reliability Standard BAL–002–WECC–3 (Contingency Reserve) submitted jointly by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization, and the Western Electricity Coordinating Council (WECC). In addition, the Commission proposes to direct NERC and WECC to submit an informational filing.

DATES: Comments are due December 29, 2020.

ADDRESSES: Comments, identified by docket number RM19–20, may be filed in the following ways:

- Electronic Filing through *http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments via United States Postal Service (USPS) to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

Susan Morris (Technical Information), Office of Electric Reliability, Division of Operations and Planning Standards, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, Telephone: (202) 502–6803, *Susan.Morris@ferc.gov*.

Mark Bennett (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, Telephone: (202) 502–8524, *Mark.Bennett@ferc.gov*.

SUPPLEMENTARY INFORMATION:

1. Pursuant to section 215(d)(2) of the Federal Power Act (FPA), the Commission proposes to approve regional Reliability Standard BAL–002–WECC–3 (Contingency Reserve). The North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), and Western Electricity Coordinating Council (WECC) jointly submitted the proposed regional Reliability Standard to the Commission for approval.

2. Proposed regional Reliability Standard BAL–002–WECC–3 applies to balancing authorities and reserve sharing groups in the WECC Region, and it specifies the quantity and types of contingency reserve required to ensure reliability under normal and abnormal conditions.[1] The principal difference between the currently-effective regional Reliability Standard BAL–002–WECC–2a and the proposed version is the elimination of Requirement R2 from the currently-effective version. As discussed in the joint petition, Requirement R2 is redundant in the light of the implementation of the continent-wide Reliability Standard BAL–003–1.1 (Frequency Response and Frequency Bias Setting). Given the requirements of the continent-wide Reliability Standard BAL–003–1.1 and the results of field tests conducted by NERC and WECC assessing the potential impacts of the retirement of Reliability Standard BAL–002–WECC–2a Requirement R2 on contingency reserves in the Western Interconnection, the Commission proposes to approve regional Reliability Standard BAL–002–WECC–3 and retire the currently-effective version of the regional Reliability Standard.

3. In addition, although the Commission proposes to approve regional Reliability Standard BAL–002–WECC–3, the Commission believes it appropriate in this case to monitor the potential impacts of retiring Requirement R2 on the adequacy of contingency reserves in the Western Interconnection. Therefore, the Commission proposes to direct NERC and WECC to submit an informational filing 27 months following implementation of regional Reliability Standard BAL–002–WECC–3 that addresses the adequacy of contingency reserves in the Western Interconnection.

[1] Reserve sharing group is defined in the Glossary of Terms Used in NERC Reliability Standards (NERC Glossary) as, ''[a] group whose members consist of two or more Balancing Authorities that collectively maintain, allocate, and supply operating reserves required for each Balancing Authority's use in recovering from contingencies within the group. . . .''

I. Background

A. Section 215 and Regional Reliability Standards

4. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards that are subject to Commission review and approval.[2] Once approved, the Reliability Standards may be enforced by NERC, subject to Commission oversight, or by the Commission independently.[3]

5. A Regional Entity may develop a regional Reliability Standard for Commission approval to be effective in that region only.[4] In Order No. 672, the Commission stated that:

> As a general matter, we will accept the following two types of regional differences, provided they are otherwise just, reasonable, not unduly discriminatory or preferential and in the public interest, as required under the statute: (1) A regional difference that is more stringent than the continent-wide Reliability Standard, including a regional difference that addresses matters that the continent-wide Reliability Standard does not; and (2) a regional Reliability Standard that is necessitated by a physical difference in the Bulk-Power System.[5]

While a Regional Entity may propose regional Reliability Standards that address specific, unique regional conditions and circumstances, such regional Reliability Standards can be retired if those justifications are no longer relevant. Accordingly, the Commission may approve retirement of a more stringent regional requirement ''if the Regional Entity demonstrates that the continent-wide Reliability Standard is sufficient to ensure the reliability of that region.'' [6]

B. Regional Reliability Standard BAL–002–WECC–2

6. On November 21, 2013, the Commission approved regional Reliability Standard BAL–002–WECC–2 specifying the quantity and types of contingency reserve required to ensure reliability under normal and abnormal conditions.[7] Regional Reliability Standard BAL–002–WECC–2 was more stringent than the continent-wide Reliability Standard BAL–002–1 because the regional Reliability Standard required applicable entities to restore contingency reserve within 60 minutes following the Disturbance Recovery Period while the continent-wide Reliability Standard only required restoration of contingency reserve within 90 minutes.[8] Requirement R2 of the regional Reliability Standard provides that balancing authorities and reserve sharing groups in the WECC Region ''shall maintain at least half of its minimum amount of Contingency Reserve identified in Requirement R1, as Operating Reserve—Spinning.'' In addition, the method for calculating minimum contingency reserve in the regional Reliability Standard was more stringent than Requirement R3.1 in Reliability Standard BAL–002–1 because it required minimum contingency reserve levels that will be at least equal to the Reliability Standard minimum (*i.e.,* equal to the most severe single contingency) and more often will be greater.[9]

C. NERC Reliability Standard BAL–003–1

7. On January 16, 2014, the Commission approved continent-wide Reliability Standard BAL–003–1 (Frequency Response and Frequency Bias Setting).[10] The Commission explained that Reliability Standard BAL–003–1 defines the amount of frequency response needed from balancing authorities to maintain Interconnection frequency within predefined bounds and includes requirements for the measurement and provision of frequency response. In particular, Order No. 794 determined that Reliability Standard BAL–003–1 ''establishes a minimum Frequency Response Obligation for each balancing authority; provides a uniform calculation of frequency response; establishes Frequency Bias Settings that are closer to actual balancing authority frequency response; and encourages coordinated automatic generation control operation.'' [11]

D. NERC and WECC Joint Petition

8. On September 6, 2019, NERC and WECC submitted a joint petition seeking approval of proposed regional Reliability Standard BAL–002–WECC–3, the associated violation risk factors and violation severity levels, effective date, and implementation plan. The joint petition also requests retirement of the currently-effective WECC regional Reliability Standard BAL–002–WECC–2a.

9. In the joint petition, NERC and WECC explain that principal modification in the proposed regional Reliability Standard is the retirement of Requirement R2 in currently-effective regional Reliability Standard BAL–002–WECC–2a. NERC and WECC maintain that the regional 50% minimum operating reserve—spinning requirement in Requirement R2 was carried forward from the Reliability Management System of WECC's predecessor, the Western Systems Coordinating Council.

10. NERC and WECC contend that continent-wide Reliability Standard BAL–003–1.1 ''helps ensure that sufficient Frequency Response is provided to maintain Interconnection frequency in support of the reliable operation of the Interconnection,'' and therefore renders regional Reliability Standard BAL–002–WECC–2a, Requirement R2 ''redundant and no longer needed for reliability in the Western Interconnection.'' [12] NERC and WECC assert that Reliability Standard BAL–003–1.1 ''addresses the same frequency response components covered in currently effective Regional Reliability Standard BAL–002–WECC–2a Requirement R2 but in a results-based manner.'' [13]

11. In particular, NERC and WECC state that Reliability Standard BAL–003–1.1, Requirement R1 requires that balancing authorities (or groups of balancing authorities known as frequency response sharing groups) ''achieve an annual Frequency Response Measure that is equal to or more negative than its Frequency Response Obligation to ensure that it is providing sufficient Frequency Response.'' [14]

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[2] 16 U.S.C. 824o.

[3] 16 U.S.C. 824o(e).

[4] 16 U.S.C. 824o(e)(4). A Regional Entity is an entity that has been approved by the Commission to enforce Reliability Standards under delegated authority from the ERO. *See* 16 U.S.C. 824o(a)(7) and (e)(4). On April 19, 2007, the Commission accepted delegation agreements between NERC and eight Regional Entities, including WECC. *North American Electric Reliability Council.,* 119 FERC ¶ 61,060, *order on reh'g,* 120 FERC ¶ 61,260 (2007).

[5] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards,* Order No. 672, 114 FERC ¶ 61,104, at P 291, *order on reh'g,* Order No. 672–A, 114 FERC ¶ 61,328 (2006).

[6] *Version One Regional Reliability Standard for Resource and Demand Balancing,* Order No. 740, 133 FERC ¶ 61,063, at P 30 (2010).

[7] *Regional Reliability Standard BAL–002–WECC–2—Contingency Reserve,* Order No. 789, 145 FERC ¶ 61,141 (2013). On January 24, 2017, by delegated letter order, the Commission approved regional Reliability Standard BAL–002–WECC–2a, which added an interpretation to Requirement R2. *North American Electric Reliability Corporation,* Docket. No. RD17–3–000 (Jan. 24, 2017) (delegated order).

[8] Reliability Standard BAL–002–3, approved on September 25, 2018, is the current version of the continent-wide Reliability Standard.

[9] Order No. 789, 145 FERC ¶ 61,141 at P 26.

[10] *Frequency Response and Frequency Bias Setting Reliability Standard,* Order No. 794, 146 FERC ¶ 61,024 (2014). Reliability Standard BAL–003–1.1 was subsequently approved by delegated letter order on November 13, 2015 and contained non-substantive changes over the prior version, Reliability Standard BAL–003–1. *North American Electric Reliability Corp.,* Docket No. RD15–6–000 (Nov. 13, 2015) (delegated order).

[11] Order No. 794, 146 FERC ¶ 61,024 at P 22.

[12] Joint Petition at 4.

[13] *Id.* at 13.

[14] *Id.* at *4.*

Moreover, NERC and WECC explain that retention of the regional 50% minimum operating reserve—spinning requirement, alongside the continent-wide frequency response requirement, could lead to confusion and the procurement of more spinning reserves than necessary for entities to meet their frequency response obligation, thereby increasing costs without providing additional reliability benefits.[15]

12. NERC and WECC also state that to evaluate the potential reliability impacts of retiring Requirement R2, WECC conducted a field test from May 1, 2017 through April 30, 2018, obtaining data from each balancing authority and each reserve sharing group.[16] NERC and WECC explain that the field test measured the effect of retiring Requirement R2 using two metrics: Disturbance control standard (DCS) performance and frequency response in the Western Interconnection.[17] The first metric measured, for each reportable DCS event,[18] whether an entity was unable to meet the DCS recovery period. The second metric monitored system performance for any loss of resources greater than 700 MW and for any adverse effects on frequency response.[19]

13. NERC and WECC assert that ''analysis of the data demonstrates that all 66 DCS events occurring during the field test period had a 100% pass rate, showing no degradation to DCS performance. Entities carried and deployed enough reserves for post disturbance Area Control Area recovery.'' [20] NERC and WECC also note that the 2018 NERC State of Reliability Report indicates that frequency response performance ''did not degrade in the Western Interconnection during the field test period.'' [21]

14. Aside from eliminating Requirement R2, NERC and WECC assert that proposed regional Reliability Standard BAL–002–WECC–3 retains the other existing requirements because they are needed to maintain reliability and ''continue[ ] to represent a more stringent set of requirements for entities in the Western Interconnection than those found in the continent-wide disturbance control standard, Reliability Standard BAL–002–3.'' [22]

E. Data Request and Response

15. On February 18, 2020, the Director of the Office of Electric Reliability issued a data request to NERC and WECC seeking: (1) Data for the remainder of the field test term not provided in the joint petition (*i.e.,* from May 1, 2018 to September 30, 2019); and (2) supporting data for NERC frequency response metric (Metric M–4) as it pertains to the Western Interconnection during the field test period (*i.e.,* from May 1, 2017 to September 30, 2019).

16. On May 18, 2020, NERC and WECC submitted data in response to the February 18 data request.

II. Discussion

17. Pursuant to FPA section 215(d)(2), the Commission proposes to approve WECC regional Reliability Standard BAL–002–WECC–3 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. For applicable entities in the WECC Region, proposed regional Reliability Standard BAL–002–WECC–3 eliminates the requirement in the currently-effective version that at least half of the minimum amount of contingency reserve shall be Operating Reserve—Spinning that meets certain reserve characteristics. The justification set forth in the joint petition taken together with the field test results support NERC and WECC's position that the continent-wide Reliability Standard BAL–003–1.1 renders the existing 50% Operating Reserve—Spinning obligation redundant. Additionally, proposed regional Reliability Standard BAL–002–WECC–3, even without Requirement R2, will continue to provide protections beyond those contained in the continent-wide disturbance control Reliability Standard BAL–002–3.

18. While we propose to approve WECC regional Reliability Standard BAL–002–WECC–3, unique aspects of contingency reserves in the Western Interconnection raise concerns about deliverability of contingency reserves within reserve sharing groups. Thirty-four balancing authorities are registered with WECC of which 32 are members of one of the two reserve sharing groups within WECC. The Southwest Reserve Sharing Group (SRSG) geographic area covers the southwest United States including Arizona, New Mexico, southern Nevada, parts of southern California including the Imperial Valley, and El Paso, Texas. The Northwest Power Pool (NWPP) reserve sharing group geographic area covers two Canadian provinces and all the states in the Western Interconnection except Arizona, New Mexico southern Nevada, and part of California. Each reserve sharing group includes member balancing authorities that have hydroelectric resources. These hydroelectric resources represent a significant share of the reserve sharing group contingency reserves. These resources may or may not be deliverable to all member balancing authorities due to transmission constraints or limits on the hydro system.[23]

19. We believe it is important to monitor the reliability impacts that the retirement of Requirement R2 may have on contingency reserves in the Western Interconnection. Therefore, as detailed below, the Commission proposes to direct that NERC and WECC submit an informational filing 27 months following implementation of regional Reliability Standard BAL–002–WECC–3. We further propose to direct that NERC and WECC make the Commission immediately aware of any adverse impacts resulting from the retirement of Requirement R2, if they become apparent prior to the end of the reporting period, and any corrective actions taken or being considered.

20. We propose to direct that NERC and WECC submit an informational filing 27 months following implementation of regional Reliability Standard BAL–002–WECC–3 that addresses the adequacy of contingency

[15] *Id.* at 12–13.

[16] *Id.* at 13. A report containing the results of the field test is appended to the joint petition as Exhibit C. Joint Petition, Exhibit C (Field Test Results, WECC–0115 BAL–002–WECC–2a Request to Retire Requirement R2).

[17] Disturbance control standard is defined in the NERC Glossary as, ''[t]he reliability standard that sets the time limit following a Disturbance within which a Balancing Authority must return its Area Control Error to within a specified range.'' *See also* Joint Petition, Exhibit C at 5.

[18] We understand the reference to ''reportable DCS event'' in the petition corresponds to the NERC Glossary term ''reportable balancing contingency event'' that appears in Reliability Standard BAL–002–3. The NERC Glossary defines reportable balancing contingency event as: ''[a]ny Balancing Contingency Event occurring within a one-minute interval of an initial sudden decline in ACE based on EMS scan rate data that results in a loss of MW output less than or equal to the Most Severe Single Contingency, and greater than or equal to the lesser amount of: (i) 80% of the Most Severe Single Contingency, or (ii) the amount listed below for the applicable Interconnection. Prior to any given calendar quarter, the 80% threshold may be reduced by the responsible entity upon written notification to the Regional Entity. (Eastern Interconnection—900 MW, Western Interconnection—500 MW, ERCOT—800 MW, and Quebec—500 MW).''

[19] Joint Petition at 13–14.

[20] *Id.* at 14.

[21] *Id.* at 15.

[22] *Id.* at 10.

[23] The WECC operating committee raised similar issues in a report regarding the Northwest price spike event that occurred the week of March 1–4, 2019. *See also, https://www.wecc.org/Reliability/PricingEvent_Paper_Final.pdf* at 13: ''Reserves are calculated based on unit capacity and do not necessarily consider fuel availability. Limits on the hydro system and wind availability . . . could reduce actual reserve levels below the calculated and reported levels. Fuel-limited resources may be overcounted toward reserves as the full capacity of the unit may be counted without regard to the availability of fuel.''

reserves in the Western Interconnection. Specifically, the report should provide, for an additional 24 month period after implementation of the standard, the following categories of data (similar to the data categories identified in the February 18, 2020 data request): (1) For any reportable DCS event, the date, time and required amount of contingency reserves at the time of the event, the actual amount of Operating Reserves—Spinning at the time of the event, and the actual DCS performance; (2) for events involving a loss of 700 MW or greater, whether it is a reportable DCS event or not, the date and time of the event, the name of the resource(s), and the total MW; (3) the amount of spinning reserve above or below 50% during non-event times on an hourly basis for 24 months following implementation; and (4) supporting data for NERC's frequency response metric (Metric M–4) as it pertains to the Western Interconnection.[24]

21. In addition to the data categories identified in the February 18 data request, we propose to direct that NERC and WECC provide: (1) The DCS performance—as described in request (1) in the paragraph above—on a balancing authority basis; and (2) the hourly amount of contingency reserve and the fraction of that contingency reserve that is classified as spinning for each hour by balancing authority (not reserve sharing group). We believe that this data is necessary to assess the amount of contingency reserves held by each balancing authority within a reserve sharing group since the contingency reserve data provided for a reserve sharing group are the aggregated sum of the contingency reserves of the participating balancing authorities.

III. Information Collection Statement

22. The FERC–725E information collection requirements contained in this Notice of Proposed Rulemaking are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA).[25] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[26] Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

23. We solicit comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. Specifically, the Commission asks that any revised burden or cost estimates submitted by commenters be supported by sufficient detail to understand how the estimates are generated.

24. *Public Reporting Burden:* The burden and cost estimates below are based on the need for applicable entities to revise documentation, already required by the current WECC regional Reliability Standard BAL–002–WECC–2a,[27] to reflect the retirement of Requirement R2 in the proposed WECC regional Reliability Standard BAL–002–WECC–3. Our estimates are based on the NERC Compliance Registry as of September 3, 2020, which indicates that 34 balancing authorities, 2 reserve sharing groups, 2 reliability coordinators, 265 generator owners, 256 generator operators, 78 transmission owners and 47 transmission operators are registered within WECC.

25. In addition to the changes identified in this Notice of Proposed Rulemaking, the Commission is adjusting burden estimates for the other WECC regional Reliability Standards in the FERC–725E information collection. These adjustments are warranted based on updates to the number of applicable registered entities that have changed due to normal industry fluctuations (*e.g.,* companies merging or splitting, going into or leaving the industry, or filling more or fewer roles in the NERC Compliance Registry).

26. There are several regional Reliability Standards in the WECC region. These regional Reliability Standards generally require entities to document compliance with substantive requirements, retain documentation, and submit reports to WECC. The following standards will be continuing without change.

- BAL–004–WECC–3 (Automatic Time Error Correction) requires balancing authorities to document that time error corrections and primary inadvertent interchange payback were conducted according to the requirements in the standard.
- FAC–501–WECC–2 (Transmission Maintenance) requires transmission owners with certain transmission paths to have a transmission maintenance and inspection plan and to document maintenance and inspection activities according to the plan.
- VAR–501–WECC–3.1 (Power System Stabilizer [PSS])[28] requires generator owners and operators to ensure the Western Interconnection is operated in a coordinated manner by establishing the performance criteria for WECC power system stabilizers.

27. The associated reporting and recordkeeping requirements included in the regional standards above are not being revised, and the Commission will be submitting a request to OMB to extend these requirements for three years. The Commission's request to OMB will also reflect the following:

- Implement the regional Reliability Standard BAL–002–WECC–3 (addressed in this Notice of Proposed Rulemaking, Docket No. RM19–20). and
- Adjustments to the burden estimates due to changes in the NERC Compliance Registry for regional Reliability Standards BAL–002–WECC–3 (Contingency Reserve) and IRO–006–WECC–3 (Qualified Path Unscheduled Flow (USF) Relief).[29]

[24] The informational filing report can be drafted in a similar manner as the field test report provided in the petition including all of the requested data.

[25] 44 U.S.C. 3507(d).

[26] 5 CFR 1320.11.

[27] BAL–002–WECC–2 is included in the OMB-approved inventory for FERC–725E. On November 9, 2016, NERC and WECC submitted a joint petition for approval of an interpretation of BAL–002–WECC–2, to be designated BAL–002–WECC–2a. BAL–002–WECC–2a was approved by order in Docket No. RD17–3–000 on January 24, 2017. The Order determined: ''The proposed interpretation provides clarification regarding the types of resources that may be used to satisfy Contingency Reserve requirements in regional Reliability Standard BAL–002–WECC–2.'' BAL–002–WECC–2a did not trigger the Paperwork Reduction Act and did not affect the burden estimate.

[28] VAR–501–WECC–3.1 was approved by order in Docket No. RD17–7–000 on September 26, 2017. The August 18, 2017 petition requested Commission approval of errata to mandatory and enforceable regional Reliability VAR–501–WECC–3 (Power System Stabilizer). Because the reporting burden for VAR–501–WECC–3.1 did not increase for entities that operate within the Western Interconnection, FERC submitted the order to OMB for information only. The burden related to VAR–501–WECC–3.1 does not differ from the burden of VAR–501–WECC–3, which is included in the OMB-approved inventory. VAR–501–WECC–3.1 is being included in this document and the Commission's submittal to OMB as part of FERC–725E.

[29] IRO–006–WECC–3 was approved by order in Docket No. RD19–4–000 on May 10, 2019. The March 6, 2019 petition states that WECC revised the regional Reliability Standard to clarify the purpose statement, replace certain defined terms, account for multiple reliability coordinators in the Western Interconnection, and conform the regional Reliability Standard to the current drafting conventions and template. Because the reporting burden for IRO–006–WECC–3 did not increase for entities that operate within the Western Interconnection, FERC submitted the order to OMB for information only. The burden related to IRO–006–WECC–3 does not differ from the burden of

28. *Changes Due to Docket No. RM19–20.* The Commission estimates the reduction in the annual public reporting burden for the FERC–725E (due to the retirement of BAL–002–WECC–2a, Requirement R2) as follows:

FERC—725E—MANDATORY RELIABILITY STANDARDS FOR THE WESTERN ELECTRIC COORDINATING COUNCIL, REDUCTIONS DUE TO DOCKET NO. RM19–20

Information collection requirements and entity	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hours & cost[30] per response (4)	Total annual burden hours & total annual cost (3) * (4) = (5)
Balancing Authorities Years 1 and 2[31].	0 (no change)	0 (no change)	0 (no change)	0 hrs.; $0 (no change) ...	0 hrs.; $0 (no change).
Balancing Authorities Year 3 and Ongoing.	34	1	34	1 hr.; $83.67 (reduction)	34 hrs.; $2,844.78 (reduction).
Sub-Total, Reduction (Due to Docket No. RM19–20) in Year 3 and Ongoing.	.....	.....	.....	.....	34 hrs.; $2,844.78 (reduction).

29. *Adjustments Due to normal industry fluctuations.* The Commission estimates the changes in the annual public reporting burden for the FERC–725E (due to the number of applicable registered entities) as follows: [32]

FERC—725E—MANDATORY RELIABILITY STANDARDS FOR THE WESTERN ELECTRIC COORDINATING COUNCIL, ADJUSTMENTS DUE TO NORMAL INDUSTRY FLUCTUATIONS

Information collection requirements and entity	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hours & cost[30] per response (4)	Total annual burden hours & total annual cost (3) * (4) = (5)
Reliability Coordinators (IRO–006–WECC–3) Reporting Requirement.	1 (increase)	1	1	1 hr.; $83.67 (increase)	1 hr.; $83.67 (increase).
Reliability Coordinators (IRO–006–WECC–3) Record Keeping Requirement.	1 (increase)	1	1	1 hr.; $34.79 (increase)	1 hr.; $34.79 (increase).
Reserve Sharing Groups (BAL–002–WECC–3) Reporting Requirement.	1 (reduction) ..	1	1	1 hr.; $83.67 (reduction)	1 hr.; $83.67 (reduction).
Sub-Total, (Net Due to Adjustments).	.....	.....	.....	.....	1 hr.; $34.79 (net change).

30. *Estimate of Continuing Annual Burden for Renewal:* [33] The Commission estimates the annual public reporting burden and cost as follows for FERC–725E. (This information will be submitted to OMB for approval.) These estimates reflect:

- Reliability Standards in FERC–725E which continue and remain unchanged (BAL–004–WECC–3, FAC–501–WECC–2, and VAR–002–WECC–3.1);
- Implement the regional Reliability Standard BAL–002–WECC–3 (addressed in this Notice of Proposed Rulemaking, Docket No. RM19–20–000); and
- Adjustments to the burden estimates for regional Reliability Standards BAL–002–WECC–3 (Contingency Reserve) and IRO–006–WECC–3 (Qualified Path Unscheduled Flow (USF) Relief).

IRO–006–WECC–2, which is included in the OMB-approved inventory. IRO–006–WECC–3 is being included in this document and the Commission's submittal to OMB as part of FERC–725E.

[30] The hourly cost (for salary plus benefits) uses the figures from the Bureau of Labor Statistics (BLS) for three positions involved in the reporting and recordkeeping requirements. These figures include salary (based on BLS data for May 2019, *http://bls.gov/oes/current/naics2_22.htm*) and benefits (based on BLS data for December 2019; issued March 19, 2020, *http://www.bls.gov/news.release/ecec.nr0.htm*) and are Manager (Code 11–0000 $97.15/hour), Electrical Engineer (Code 17–2071 $70.19/hour), and File Clerk (Code 43–4071 $34.79/hour). The hourly cost for the reporting requirements ($83.67) is an average of the cost of a manager and engineer. The hourly cost for recordkeeping requirements uses the cost of a file clerk.

[31] The reduction in burden is zero for the first two years due to the directive in this document of Proposed Rulemaking to continue to report hourly contingency reserve data for 24 months.

[32] The number of applicable entities is based on the NERC Compliance Registry as of September 3, 2020.

[33] The Commission is also removing 1746 one-time burden hours associated with the requirements in Docket No. RD17–5 for regional Reliability Standard VAR–501–WECC–3 (Power System Stabilizer [PSS]). The one-time burden has been completed and will now be administratively removed on submittal to OMB. Those hours are not included in the table.

FERC—725E—MANDATORY RELIABILITY STANDARDS FOR THE WESTERN ELECTRIC COORDINATING COUNCIL

[New and continuing information collection requirements]

Entity	Number of respondents [34]	Annual number of responses per respondent	Annual number of responses	Average burden hrs. & cost [30] per response ($)	Total annual burden hours & total annual cost ($)	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1) = (6)
Reporting Requirements						
Balancing Authorities Years 1 and 2 (BAL–002–WECC–3; BAL–004–WECC–3; IRO–006–WECC–3).	34	1	34	21 hrs.; $1,757.07	714 hrs.; $59,740.38	$1,757.07
Balancing Authorities Year 3 and Ongoing (BAL–002–WECC–3; BAL–004–WECC–3; IRO–006–WECC–3).	34	1	34	20 hrs.; $1,673.40 ..	680 hrs.; $56,895.60	$1,673.40
Reserve Sharing Groups (BAL–002–WECC–3).	2	1	2	1 hr.; $83.67	2 hrs.; $167.34	$83.67
Reliability Coordinators (IRO–006–WECC–3).	2	1	2	1 hr.; $83.67	2 hrs.; $167.34	$83.67
Transmission Owners that operate qualified transfer paths (FAC–501–WECC–2).	5	1	5	40 hrs.; $3,346.80 ..	200 hrs.; $16,734.00	$3,346.80
Generator Owners and/or Operators (VAR–501–WECC–3.1).	291	2	582	1 hr.; $83.67	582 hrs.; $48,695.94	$167.34
Sub-Total for Reporting Requirements in Years 1 and 2.	.....	.....	625	.....	1,500 hrs.; $125,505.00.	.....
Sub-Total for Reporting Requirements in Year 3 & Ongoing.	.....	.....	625	.....	1,466 hrs.; $122,660.22.	.....
Recordkeeping Requirements						
Balancing Authorities (BAL–002–WECC–3; BAL–004–WECC–3; IRO–006–WECC–3)	34	1	34	3.1 hrs.; $107.85 ...	105.4 hrs.; $3,666.87	$107.85
Reliability Coordinator (IRO–006–WECC–3).	2	1	2	1 hr.; $34.79	2 hrs.; $69.58	$34.79
Transmission Owner that operate qualified transfer paths (FAC–501–WECC–2).	5	1	5	6 hrs.; $208.74	30 hrs.; $1043.70	$208.74
Generator Owners and/or Operators (VAR–501–WECC–3.1).	291	2	582	0.5 hrs.; $17.40	291 hrs.; $10,123.89	$34.79
Sub-Total for Record-keeping Require-ments.	.....	.....	623	.....	428.4 hrs.; $14,904.04.	.....
Total for FERC–725E, in Yr. 1 and Yr. 2.	.....	.....	1248	.....	1,928.4 hrs.; $140,409.04.	.....
Total for FERC–725E, in Yr. 3 & Ongoing.	.....	.....	1248	.....	1,894.4 hrs.; $137,564.26.	.....

31. Interested persons may obtain information on the reporting requirements by contacting Ellen Brown, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, via email (*DataClearance@ferc.gov*) or telephone ((202) 502–8663).

[34] The number of respondents is derived from the NERC Compliance Registry as of September 3, 2020.

32. The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

33. Please send comments concerning the collection of information and the associated burden estimates to: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. Due to security concerns, comments should be sent electronically to the following email address: *oira_submission@omb.eop.gov.* Comments submitted to OMB should refer to OMB Control Nos. 1902–0246.

34. Please submit a copy of your comments on the information collections to the Commission via the eFiling link on the Commission's website at *http://www.ferc.gov.* If you are not able to file comments electronically, please send a copy of your comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. Comments on the information collection that are sent to FERC should refer to RM19–20–000.

Title: FERC–725E, Mandatory Reliability Standards-WECC (Western Electric Coordinating Council).

Action: Three-year approval of the FERC–725E information collection requirements, as modified by Docket No. RM19–20–000 and due to normal industry fluctuations.

OMB Control No: 1902–0246 (FERC–725E).

Respondents: Business or other for-profit, and not-for-profit institutions.

Frequency of Responses: One-time.

Necessity of the Information: The proposed regional Reliability Standard BAL–002–WECC–3, if adopted, would implement the Congressional mandate of the Energy Policy Act of 2005 to develop mandatory and enforceable Reliability Standards to better ensure the reliability of the nation's Bulk-Power System. Specifically, the proposal ensures that balancing authorities and reserve sharing groups in the WECC Region have the quantity and types of contingency reserve required to ensure reliability under normal and abnormal conditions.

Internal review: The Commission has reviewed the proposed regional Reliability Standard BAL–002–WECC–3 and made a determination that its action is necessary to implement section 215 of the FPA. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

IV. Environmental Analysis

35. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[35] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[36] The actions proposed here fall within this categorical exclusion in the Commission's regulations.

V. Regulatory Flexibility Act

36. The Regulatory Flexibility Act of 1980 (RFA)[37] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small entity.[38] These standards are provided in the SBA regulations at 13 CFR 121.201.[39]

37. Under SBA's size standards,[40] balancing authorities, reserve sharing groups, generator operators, generator owners, transmission owners, and transmission operators all fall under the category of (NAICS code 221111-Hydroelectric Power Generation (500) and NAICS code 221118-Other Electric Power Generation (250)), with a total size threshold of 750 employees (including the entity and its associates).[41]

38. This proposed rule, if adopted, would apply to registered balancing authorities and reserved sharing groups in the NERC Compliance Registry with data submitted to the Energy Information Administration on Form EIA–861 indicating that, of the 36 entities, 34 are registered balancing authorities and two are reserve sharing groups, two may qualify as small entities.[42]

39. Using the list from the NERC Compliance Registry (dated September 3, 2020), we estimate that approximately 22% of those entities are small entities.

40. The Commission estimates that, on average, each of the two affected small entities will have no further ongoing costs after year three. These figures are based on information collection costs plus additional costs for compliance.

41. The Commission does not consider this to be a significant economic impact for small entities because it should not represent a significant percentage of the operating budget. Accordingly, the Commission certifies that this proposed rulemaking will not have a significant economic impact on a substantial number of small entities. The Commission seeks comment on this certification.

VI. Comment Procedures

42. The Commission invites interested persons to submit comments on the matters and issues proposed in this document to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due December 29, 2020. Comments must refer to Docket No. RM19–20–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

43. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

44. Commenters that are not able to file comments electronically must send

[35] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

[36] 18 CFR 380.4(a)(2)(ii).

[37] 5 U.S.C. 601–612.

[38] 13 CFR 121.101.

[39] 13 CFR 121.201. *See also* U.S. Small Business Administration, *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* (effective Feb. 26, 2016), *https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

[40] 13 CFR 121.201

[41] The threshold for the number of employees indicates the maximum allowed for a concern and its affiliates to be considered small.

[42] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act (SBA), which defines a ''small business concern'' as a business that is independently owned and operated and that is not dominant in its field of operation. *See* 15 U.S.C. 632. According to the Small Business Administration, an electric utility is defined as ''small'' if, including its affiliates, the number of employees indicates the maximum allowed for a concern and its affiliates to be considered small.

an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

45. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VII. Document Availability

46. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington DC 20426.

47. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

48. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

By direction of the Commission.

Issued: October 15, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–23297 Filed 10–29–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–119890–18]

RIN 1545–BO92

Section 42, Low-Income Housing Credit Average Income Test Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations setting forth guidance on the average income test under section 42(g)(1)(C) of the Internal Revenue Code (Code) for purposes of the low-income housing credit. These proposed regulations affect owners of low-income housing projects, tenants in those projects, and State or local housing credit agencies that administer the low-income housing credit.

DATES: Written (including electronic) comments must be received by December 29, 2020.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–104591–18) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through the mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket.

FOR FURTHER INFORMATION CONTACT: Concerning these proposed regulations, Dillon Taylor or Michael J. Torruella Costa at (202) 317–4137; concerning submissions of comments, Regina L. Johnson at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 42 of the Code.

The Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085 (1986 Act) created the low-income housing credit under section 42 of the Code. Section 42(a) provides that the amount of the low-income housing credit for any taxable year in the credit period is an amount equal to the applicable percentage of the qualified basis of each qualified low-income building.

Section 42(c)(1)(A) provides that the qualified basis of any qualified low-income building for any taxable year is an amount equal to (i) the applicable fraction (determined as of the close of the taxable year) of (ii) the eligible basis of the building (determined under section 42(d)). Sections 42(c) and 42(d) define applicable fraction and eligible basis. Section 42(d)(1) and (2) define the eligible basis of a new building or an existing building, respectively.

Section 42(c)(2) defines a qualified low-income building as any building which is part of a qualified low-income housing project at all times during the compliance period (that is, the period of 15 taxable years beginning with the first taxable year of the credit period) and to which the amendments made by section 201(a) of the 1986 Act apply (generally property placed in service after December 31, 1986, in taxable years ending after that date). To qualify as a low-income housing project, one of the section 42(g) minimum set-aside tests, as elected by the taxpayer, must be satisfied.

Prior to the enactment of the Consolidated Appropriations Act of 2018, Public Law 115–141, 132 Stat. 348 (2018 Act), section 42(g) set forth two minimum set-aside tests that a taxpayer may elect with respect to a low-income housing project, known as the 20–50 test and the 40–60 test. Under the 20–50 test, at least 20 percent of the residential units in the project must be both rent-restricted and occupied by tenants whose gross income is 50 percent or less of the area median gross income (AMGI). Section 42(g)(1)(A). Under the 40–60 test, at least 40 percent of the residential units in the project must be both rent-restricted and occupied by tenants whose gross income is 60 percent or less of AMGI. Section 42(g)(1)(B).

Section 103(a) of Division T of the 2018 Act added section 42(g)(1)(C) to the Code to provide a third minimum set-aside test that a taxpayer may elect with respect to a low-income housing project: The average income test. Section 42(g)(1)(C)(i) provides that, a project meets the minimum requirements of the average income test if 40 percent or more (25 percent or more in the case of a project described in section 142(d)(6)) of the residential units in the project are both rent-restricted and occupied by tenants whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective unit. Section 42(g)(1)(C)(ii)(I) and (III) provides that the taxpayer must designate the imputed income limitation for each unit and the designated imputed income limitation of any unit must be 20, 30, 40, 50, 60, 70, or 80 percent of AMGI. Section 42(g)(1)(C)(ii)(II) provides that the average of the imputed income

limitations designated by the taxpayer for each unit must not exceed 60 percent of AMGI.

Generally, under section 42(g)(2)(D)(i), if the income of the occupant of a low-income unit rises above the income limitation, the unit continues to be treated as a low-income unit if the income of the occupant initially met the income limitation and the unit continues to be rent-restricted. Section 42(g)(2)(D)(ii), however, provides an exception to the general rule in case of the 20–50 test or the 40–60 test. Under this exception, the unit ceases to be treated as a low-income unit when two conditions occur. The first condition is that the income of an occupant of a low-income unit increases above 140 percent of the imputed income limitation applicable to the unit under section 42(g)(1) (applicable income limitation). The second condition is that a new occupant, whose income exceeds the applicable income limitation, occupies any residential unit in the building of a comparable or smaller size. In the case of a deep rent skewed project described in section 142(d)(4)(B), ''170 percent'' is substituted for ''140 percent'' in applying the applicable income limitation under section 42(g)(1), and the second condition is that any low-income unit in the building is occupied by a new resident whose income exceeds 40 percent of AMGI. Section 42(g)(2)(D)(iv). The exception contained in section 42(g)(2)(D)(ii) is referred to as the ''next available unit rule.'' *See also* § 1.42–15 of the Income Tax Regulations.

Section 103(b) of Division T of the 2018 Act added section 42(g)(2)(D)(iii), (iv) and (v) to the Code to provide a new next available unit rule for situations in which the taxpayer has elected the average income test. Under this new next available unit rule, a unit ceases to be a low-income unit if two conditions are met. The first condition is whether the income of an occupant of a low-income unit increases above 140 percent of the greater of (i) 60 percent of AMGI, or (ii) the imputed income limitation designated by the taxpayer with respect to the unit (applicable imputed income limitation). The second condition is whether any other residential rental unit in the building that is of a size comparable to, or smaller than, that unit is occupied by a new tenant whose income exceeds the applicable imputed income limitation. If the new tenant occupies a unit that was taken into account as a low-income unit prior to becoming vacant, the applicable imputed income limitation is the limitation designated with respect to the unit. If the new tenant occupies a market-rate unit, the applicable imputed income limitation is the limitation that would have to be designated with respect to the unit in order for the project to continue to maintain an average of the designations of 60 percent of AMGI or lower.

In the case of a deep rent skewed project described in section 142(d)(4)(B) for which the taxpayer elects the average income test, ''170 percent'' is substituted for ''140 percent'' in applying the applicable imputed income limitation, and the second condition is that any low-income unit in the building is occupied by a new resident whose income exceeds the lesser of 40 percent of AMGI or the imputed income limitation designated with respect to the unit under section 42(g)(1)(C)(ii)(I). Section 42(g)(2)(D)(iv).

Under section 42(g), once a taxpayer elects to use a particular set-aside test with respect to a low-income housing project, that election is irrevocable. Thus, if a taxpayer had previously elected to use the 20–50 test under section 42(g)(1)(A) or the 40–60 test under section 42(g)(1)(B) with respect to a low-income housing project, the taxpayer may not subsequently elect to use the average income test under section 42(g)(1)(C) with respect to that low-income housing project. Section 42(g)(4) provides generally that section 142(d)(2) applies for purposes of determining whether any project is a qualified low-income housing project and whether any unit is a low-income unit.

Section 42(m)(1) provides that the owners of an otherwise-qualifying building are not entitled to the housing credit dollar amount that is allocated to the building unless, among other requirements, the allocation is pursuant to a qualified allocation plan (QAP). A QAP provides standards by which a State or local housing credit agency (Agency) is to make these allocations. Under § 1.42–5(a)(1), a QAP must contain a procedure that the Agency will follow in monitoring noncompliance.

Explanation of Provisions

I. Proposed § 1.42–15, Next Available Unit Rule for the Average Income Test

The proposed regulations update the next available unit provisions in § 1.42–15 to reflect the new set-aside based on the average income test and to take into account section 42(g)(2)(D)(iii), (iv) and (v). In situations where multiple units are over-income at the same time in an average-income project that has a mix of low-income and market-rate units, these regulations provide that a taxpayer need not comply with the next available unit rule in a specific order. Instead, renting any available comparable or smaller vacant unit to a qualified tenant maintains the status of all over-income units as low-income units until the next comparable or smaller unit becomes available (or, in the case of a deep rent skewed project, the next low-income unit becomes available). For example, in a 20-unit building with 9 low-income units (3 units at 80 percent of AMGI; 2 units at 70 percent of AMGI; 1 unit at 40 percent of AMGI; and 3 units at 30 percent of AMGI), if there are two over-income units, one a 30 percent income 3-bedroom unit and another a 70 percent 2-bedroom unit, and the next available unit is a vacant 2-bedroom market-rate unit, renting the vacant 2-bedroom unit to occupants at either the 30 or 70 percent income limitation would satisfy both the minimum set-aside of 40 percent and the average test of 60 percent or lower required by section 42(g)(1)(C).

II. Proposed § 1.42–19, Average Income Test

A. In General

The proposed regulations provide that a project for residential rental property meets the requirements of the average income test under section 42(g)(1)(C) if 40 percent or more (25 percent or more in the case of a project described in section 142(d)(6)) of the residential units in the project are both rent-restricted and occupied by tenants whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective unit. The average of the designated imputed income limitations of the low-income units in the project must not exceed 60 percent of AMGI.

B. Designation of Imputed Income Limitations

Section 42(g)(1)(C)(ii) provides special rules relating to the income limitations applicable in the average income test. Specifically, it provides that the taxpayer must designate the imputed income limitation for each unit taken into account under the average income test. Further, the imputed income limitation of any unit designated must be 20, 30, 40, 50, 60, 70, or 80 percent of AMGI.

The proposed regulations provide that a taxpayer must designate the imputed income limitation of each unit taken into account under the average income test in accordance with: (1) Any procedures established by the IRS in forms, instructions, or publications or in

other guidance published in the Internal Revenue Bulletin pursuant to § 601.601(d)(2)(ii)(*b*); and (2) any procedures established by the Agency that has jurisdiction over the low-income housing project that contains the units to be designated, to the extent that those Agency procedures are consistent with any IRS guidance and these regulations. After the enactment of the 2018 Act, commenters have specifically asked that Agencies be provided this flexibility, and the Treasury Department and the IRS agree that Agencies should generally be able to establish designation procedures that accommodate their needs. Several commenters suggested allowing the Agencies, when they consider it necessary, to require income recertifications, to set compliance testing periods, or to adjust compliance monitoring fees to reflect the additional costs associated with monitoring income averaging. These proposed regulations do not change existing levels of flexibility on those issues.

C. Method and Timing of Unit Designation

The Code does not specify the manner by which taxpayers must designate the imputed income limitation of units for purposes of the average income test. Designation of the imputed income limitation with respect to a unit is, first, for Agencies to evaluate the proper mix of units in a project in making housing credit dollar amount allocations consistent with the State policies and procedures set forth in the QAPs, and, second, to carry out their compliance-monitoring responsibilities. For these reasons, the proposed regulations provide that the taxpayers should designate the units in accordance with the Agency procedures relating to such designations, provided that the Agency procedures are consistent with any requirements and procedures relating to unit designation that the IRS may set forth in its forms and publications and other guidance. Further, to promote certainty, the proposed regulations provide that the taxpayers must complete the initial designation of all of the units taken into account for the average income test as of the close of the first taxable year of the credit period. In addition, the proposed regulations provide that no change to the designated imputed income limitations may be made.

D. Requirement To Maintain 60 Percent AMGI Average Test and Opportunity To Take Mitigating Actions

A low-income housing project must meet the requirements of the elected set-aside test for each taxable year. For a project electing the average income test, in addition to the project containing at least 40 percent low-income units, the designated imputed income limitations of the project must meet the requirement of an average test. That is, the average of the designated imputed income limitations of all low-income units (including units in excess of the minimum 40 percent set-aside) must be 60 percent of AMGI or lower (60-percent or lower average test). Regardless of their other attributes, residential units that are not included in the computation of the average do not count as low-income units. Consistent with the application of the 20–50 test and 40–60 test, the statutory requirements of a set-aside test do not change from year to year. Accordingly, in each taxable year, the average of all of the designations must be 60 percent of AMGI or lower.

The Treasury Department and the IRS recognize that, in some situations, the average income requirement may magnify the adverse consequences of a single unit's failure to maintain its status as a low-income unit. Assume, for example, a 100 percent low-income project in which a single unit is taken out of service. Under the 20–50 or 40–60 set-asides, the project remains a qualified low-income housing project even though the reduction in qualified basis may trigger a corresponding amount of recapture. By contrast, under the average income set-aside, if the failing unit has a designated imputed income limitation that is less than 60 percent of AMGI, the average of the limitations without that unit may now be more than 60 percent. In the absence of some relief provision under the average income test, the entire project would fail, and the taxpayer would experience a correspondingly large recapture.

Because there is no indication that the statute intended such a stark disparity between the average income set-aside and the existing 20–50 and 40–60 set asides, the proposed regulations provide for certain mitigating actions. In most situations, if the taxpayer takes a mitigating action within 60 days of the close of a year for which the average income test might be violated, the taxpayer avoids total disqualification of the project and significantly reduces the amount of recapture. See part II.F. of this Explanation of Provisions.

Responding to that same concern after the enactment of the 2018 Act, some commenters asked that Agencies be provided a specific grant of authority to establish procedures and policies related to the average income set-aside that could reduce the risk of failure of an entire project. For example, some commenters asked that Agencies be allowed to establish rules permitting owners to alter the imputed income limitations designated for particular units (presumably by reducing income limitations when needed to maintain a compliant average and then later raising limitations to prevent a permanent reduction in the aggregate maximum gross rents from the project). As described in part II.C. of this Explanation of Provisions, these proposed regulations do not permit designated imputed income limitations to be changed. Other commenters proposed allowing owners to take protective steps similar to those that are provided in the proposed regulations.

E. Results Following an Opportunity To Take Mitigating Actions

The proposed regulations provide that, after any mitigating actions, if, prior to the end of the 60th day following the year in which the project would otherwise fail the 60-percent or lower average test, the project satisfies all other requirements to be a qualified low-income housing project, then as a result of the mitigating action, the project is treated as having satisfied the 60-percent or lower average test at the close of the immediately preceding year. However, if no mitigating actions are taken, the project fails to be a qualified low-income housing project as of the close of the year in which the project fails the average income test.

F. Description of Mitigating Actions

The proposed regulations describe two possible mitigating actions. First, the taxpayer may convert one or more market-rate units to low-income units. Immediately prior to becoming a low-income unit, that unit must be vacant or occupied by a tenant who qualifies for residence in a low-income unit (or units) and whose income is not greater than the new imputed income limitation of that unit (or units).

Alternatively, the taxpayer may identify one or more low-income units as ''removed'' units. A unit may be a removed unit only if it complies with all the requirements of section 42 to be a low-income unit.

G. Tax Treatment of Removed Units

The proposed regulations provide that a removed unit is not included in computing the average of the imputed income limitations of the low-income units under the 60-percent or lower average test. If the absence of one or more removed units from the computation causes fewer than 40 percent (or, if applicable, fewer than 25

percent) of the residential units to be taken into account in computing the average, the project fails to be a qualified low-income housing project. In addition, a removed unit is not treated as a low-income unit (or units) for purposes of credit calculation. On the other hand, for purposes of the recapture provisions of section 42(j), a removed unit is treated the same as a low-income unit, and thus the act of identifying a removed unit does not trigger recapture (unless the identification reduces the low-income units below 40 percent of the project).

H. Request for Comments on an Alternative Mitigating Action Approach

Recognizing that this approach of mitigating actions may in certain cases cause a project to have less than 40 percent of low-income units and, thereby, to fail the average income test, the Treasury Department and the IRS request comments on an alternative mitigating approach. Under this alternative mitigating approach, in the event that the average test rises above 60 percent of AMGI as of the close of a taxable, due to a low-income unit or units ceasing to be treated as a low-income unit or units, the taxpayer may take the mitigating actions of redesignating the imputed income limitation of a low-income unit to return the average test to 60 percent of AMGI or lower. If, under this approach, a redesignation causes a low-income unit to be an over-income unit as defined in § 1.42–15(a), the taxpayer would be required to apply the next available unit rule applicable to the average income test.

Proposed Applicability Date

The amendments to the next available unit regulations in § 1.42–15 are proposed to apply to occupancy beginning 60 or more days after the date those regulations are published as final regulations in the **Federal Register**. The average income test regulations in § 1.42–19 are proposed to apply to taxable years beginning after the date those regulations are published as final regulations in the **Federal Register**. Taxpayers, however, may rely on the proposed amendments to § 1.42–15 for occupancy beginning after October 30, 2020 and on or before 60 days after the date those regulations are published as final regulations in the **Federal Register**, provided the taxpayer follows the rules in proposed § 1.42–15 in their entirety, and in a consistent manner. Taxpayers may also rely on proposed § 1.42–19 for taxable years beginning after October 30, 2020 and on or before the date those regulations are published as final regulations in the **Federal Register**, provided the taxpayer follows the rules in proposed § 1.42–19 in their entirety, and in a consistent manner.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that, prior to the publication of this regulation and before the enactment of the 2018 Act, taxpayers were already required to satisfy either the 20–50 test or the 40–60 test, as elected by the taxpayer, in order to qualify as a low-income housing project. The 2018 Act added a third minimum set-aside test, the average income test, that taxpayers may elect. This regulation sets forth requirements for the average income test, and the costs associated with the average income test are similar to the costs associated with the 20–50 test and 40–60 test. Accordingly, the Secretary certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at *www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement 2020–4, 2020–17 IRB 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

The principal authors of these regulations are Dillon Taylor and Michael J. Torruella Costa, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding in numerical order an entry for § 1.42–19 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.42–19 also issued under 26 U.S.C. 42(n).

* * * * *

■ **Par. 2.** Section 1.42–0 is amended by:
■ 1. In § 1.42–15:
■ i. Revising the entry for (c).
■ ii. Adding entries for (c)(1) and (2) and (c)(2)(i) through (iv).
■ iii. Revising the entry for (i).
■ iv. Adding entries for (i)(1) and (2).
■ 2. Adding § 1.42–19.

The revisions and additions read as follows:

§ 1.42–0 Table of contents.

* * * * *

§ 1.42–15 Available unit rule.

* * * * *

(c) Exceptions.

(1) Rental of next available unit in case of the 20–50 test or 40–60 test.

(2) Rental of next available unit in case of the average income test.

(i) Basic rule.

(ii) No requirement to comply with the next available unit rule in a specific order.

(iii) Deep rent skewed projects.

(iv) Limitation.

* * * * *

(i) Applicability dates.

(1) In general.

(2) Applicability dates under the average income test.

* * * * *

§ 1.42–19 Average income test.

(a) In general.

(b) Designated of imputed income limitations.
(1) 10-percent increments.
(2) Method of designation.
(3) Timing of designation.
(i) No subsequent change to imputed income limitations.
(ii) Converted market-rate units.
(c) Opportunity to take mitigating actions.
(d) Results following an opportunity to take mitigating actions.
(e) Mitigating actions.
(1) Conversion of a market-rate unit.
(2) Removing low-income units from the average income computation.
(f) Tax treatment of removed units.
(1) Status of the project.
(2) Recapture.
(3) Amount of credit.
(4) Long-term commitment.
(g) Examples.
(1) Example 1.
(i) Facts.
(ii) Analysis.
(2) Example 2.
(i) Facts.
(ii) Analysis.
(A) Average income test.
(B) Recapture.
(C) Restoration of habitability and of qualified basis.
(h) Applicability dates.

■ **Par. 3.** Section 1.42–15 is amended by:
■ 1. Revising the definition of *Over-income unit* in paragraph (a).
■ 2. Revising the heading for paragraph (c).
■ 3. Designating the text of paragraph (c) as paragraph (c)(1) and adding a heading for newly designated paragraph (c)(1).
■ 4. Adding paragraph (c)(2).
■ 5. Revising paragraph (i).

The revisions and additions read as follows:

§ 1.42–15 Available unit rule.

(a) * * *

Over-income unit means, in the case of a project with respect to which the taxpayer elects the requirements of section 42(g)(1)(A) (20–50 test) or section 42(g)(1)(B) (40–60 test), a low-income unit in which the aggregate income of the occupants of the unit increases above 140 percent of the applicable income limitation under section 42(g)(1)(A) and (B), or above 170 percent of the applicable income limitation for deep rent skewed projects described in section 142(d)(4)(B). In the case of a project with respect to which the taxpayer elects the requirements of section 42(g)(1)(C) (average income test), *over-income unit* means a low-income unit in which the aggregate income of the occupants of the unit increases above 140 percent (170 percent in case of deep rent skewed projects described in section 142(d)(4)(B)) of the greater of 60 percent of area median gross income or the imputed income limitation designated with respect to the unit under § 1.42–19(b).

* * * * *

(c) *Exceptions*—(1) *Rental of next available unit in case of the 20–50 test or 40–60 test.** * *

(2) *Rental of next available unit in case of the average income test*—(i) *Basic rule.* In the case of a project with respect to which the taxpayer elects the average income test, if a unit becomes an over-income unit within the meaning of paragraph (a) of this section, that unit ceases to be a low-income unit if—

(A) Any residential rental unit (of a size comparable to, or smaller than, the over-income unit) is available, or subsequently becomes available, in the same low-income building; and

(B) That available unit is occupied by a new resident whose income exceeds the limitation described in paragraph (c)(2)(iv) of this section.

(ii) *No requirement to comply with the next available unit rule in a specific order.* In situations where multiple units in a building are over-income units at the same time, it is not necessary for a taxpayer to comply with the rule in this section (next available unit rule) in a specific order.

(iii) *Deep rent skewed projects.* In the case of a project described in section 142(d)(4)(B) with respect to which the taxpayer elects the average income test, if a unit becomes an over-income unit within the meaning of paragraph (a) of this section, that unit ceases to be a low-income unit if—

(A) Any low-income unit is available, or subsequently becomes available, in the same low-income building; and

(B) That unit is occupied by a new resident whose income exceeds the lesser of 40 percent of area median gross income or the imputed income limitation designated with respect to that unit.

(iv) *Limitation.* For purposes of paragraph (c)(2) of this section (basic next available unit rule for the average income test), the limitation described in this paragraph (c)(2)(iv) is—

(A) In the case of a unit that was taken into account as a low-income unit prior to becoming vacant, the imputed income limitation designated with respect to that available unit for the average income test under § 1.42–19(b); and

(B) In the case of any other unit, the highest imputed income limitation that could be designated with respect to that available unit under § 1.42–19(e)(1), in order for the project to continue to meet the requirements of § 1.42–19(a)(3) (60 percent of AMGI or less).

* * * * *

(i) *Applicability dates*—(1) *In general.* Except as provided in paragraph (i)(2) of this section, this section applies to leases entered into or renewed on and after September 26, 1997.

(2) *Applicability dates under the average income test.* The second sentence of the definition of *over-income unit* in paragraph (a) of this section and paragraph (c)(2) of this section apply to occupancy beginning 60 or more days after [date these regulations are published as final regulations in the **Federal Register**].

■ **Par. 4.** Section 1.42–19 is added to read as follows:

§ 1.42–19 Average income test.

(a) *In general.* A project for residential rental property meets the requirements of section 42(g)(1)(C) (average income test) if—

(1) 40 percent or more (25 percent or more in the case of a project described in section 142(d)(6)) of the residential units in the project are both rent-restricted and occupied by individuals whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective unit;

(2) The taxpayer designates these imputed income limitations in the manner provided by paragraph (b) of this section; and

(3) The average of the imputed income limitations of the low-income units in the project does not exceed 60 percent of area median gross income (AMGI).

(b) *Designation of imputed income limitations*—(1) *10-percent increments.* The designated imputed income limitation of any unit must be 20 percent, 30 percent, 40 percent, 50 percent, 60 percent, 70 percent, or 80 percent of AMGI.

(2) *Method of designation.* The taxpayer must designate the imputed income limitation of each unit in accordance with—

(i) Any procedures established by the Internal Revenue Service (IRS) in forms, instructions, or publications or in other guidance published in the Internal Revenue Bulletin pursuant to § 601.601(d)(2)(ii)(*b*) of this chapter; and

(ii) Any procedures established by the State or local housing credit agency (Agency) that has jurisdiction over the low-income housing project that contains the units to be designated, to the extent that those Agency procedures are consistent with the requirements of paragraph (b)(2)(i) of this section.

(3) *Timing of designation.* Except as provided in paragraph (b)(3)(ii) of this section, not later than the close of the first taxable year of the credit period,

the taxpayer must designate the imputed income limitation of each unit taken into account for purposes of paragraph (a) of this section.

(i) *No subsequent change to imputed income limitations.* No change to the designated imputed income limitations may be made. Even if the taxpayer elects to identify a low-income unit as a removed unit under paragraph (e)(2) of this section, the designated imputed income limitation of the unit is not changed. If a designation is removed, the unit ceases to be a low-income unit.

(ii) *Converted market-rate units.* If a residential unit that was not a low-income unit is converted to a low-income unit, the designation of the imputed income limitation for that unit must take place on or before the 60th day after the unit is to be treated as a low-income unit. See paragraphs (b)(1) and (2) of this section for rules regarding designation.

(c) *Opportunity to take mitigating actions.* The taxpayer may take one or more of the mitigating actions described in paragraph (e)(1) or (2) of this section if—

(1) At the close of a taxable year (failing year), one or more low-income units have ceased to qualify as low-income units; and

(2) This cessation causes the project of which they are a part to fail to satisfy the requirement in paragraph (a)(3) of this section (regarding the average of the imputed income limitations of the low-income units).

(d) *Results following an opportunity to take mitigating actions.* (1) After any mitigating actions, if, prior to the end of the 60th day following the failing year, the project satisfies the requirements to be a low-income housing project (including satisfaction of the requirement in paragraph (a)(3) of this section), then paragraph (a)(3) of this section is treated as having been satisfied at the close of the failing year.

(2) If paragraph (d)(1) of this section does not apply, the project fails to be a qualified low-income project on the close of the failing year.

(e) *Mitigating actions*—(1) *Conversion of a market-rate unit.* The taxpayer may convert to low-income status a unit that is not currently a low-income unit. Immediately prior to becoming a low-income unit, the unit must be vacant or occupied by a tenant who qualifies for residence in a low-income unit and whose income is not greater than the imputed income limitation designated by the taxpayer for that unit. This inclusion of conversions as mitigating actions is without prejudice to the permissibility of conversions in other contexts.

(2) *Removing low-income units from the average income computation.* The taxpayer may identify one or more residential units as *removed units.* A unit may be a removed unit only if it complies with all requirements of section 42 to be a low-income unit. Status as a removed unit may be ended by the taxpayer at any time. Identification of a removed unit and termination of that identification must be effected as provided by the IRS in forms, publications, and guidance published in the Internal Revenue Bulletin pursuant to § 601.601(d)(2)(ii)(*b*) of this chapter. In the absence of any such IRS requirements, the identification and termination must be made in accordance with any Agency procedures.

(f) *Tax treatment of removed units*—(1) *Status of the project.* A removed unit is not taken into account under paragraph (a)(3) of this section in computing the average of the imputed income limitations of the low-income units. If the absence of one or more removed units from the computation causes fewer than 40 percent (or, if applicable, fewer than 25 percent) of the residential units to be taken into account in computing the average, the project fails to be a qualified low-income housing project.

(2) *Recapture.* For purposes of applying section 42(j), removed units are taken into account in the same manner as low-income units. Thus, during the compliance period, a unit's status as a removed unit does not reduce the applicable fraction of section 42(c)(1)(B) and thus does not reduce qualified basis for purposes of recapture under section 42(j).

(3) *Amount of credit.* For purposes of section 42(a), removed units are not taken into account as low-income units. Thus, during the credit period, a unit's status as a removed unit reduces the applicable fraction—and thus reduces qualified basis—for purposes of calculating the taxpayer's annual credit amount.

(4) *Long-term commitment.* For purposes of applying section 42(h)(6)(B)(i) to any taxable year after the credit period, removed units are not taken into account as low-income units.

(g) *Examples.* The operation of this section is illustrated by the following examples.

(1) *Example 1*—(i) *Facts.* (A) A single-building housing project received an allocation of housing credit dollar amount. The taxpayer who owns the project elects the average income test, intending for the 5-unit building to have100 percent low-income occupancy. The taxpayer properly and timely designates the imputed income limitations for the 5 units as follows: 2 units at 40 percent of AMGI; 1 unit at 60 percent of AGMI; and 2 units at 80 percent of AMGI.

TABLE 1 TO PARAGRAPH (g)(1)(i)(A)

Unit No.	Imputed income limitation of the unit
1	80 percent of AMGI.
2	80 percent of AMGI.
3	60 percent of AMGI.
4	40 percent of AMGI.
5	40 percent of AMGI.

(B) In the first taxable year of the credit period (Year 1), the project is fully leased and occupied.

(ii) *Analysis.* (A) The average of the imputed income limitations of the units is 60 percent of AMGI calculated as follows: $(2 \times 40\% + 1 \times 60\% + 2 \times 80\%)/5 = 60\%$.

(B) Thus, the income limitations satisfy the requirement in paragraph (a)(3) of this section that the average of the designated imputed income limitations of the low-income units in the project does not exceed 60% of AMGI.

(2) *Example 2*—(i) *Facts.* Assume the same facts as in paragraph (g)(1) of this section (*Example 1*). In Year 2, Unit #4 becomes uninhabitable. (Unit #4 has a designated imputed income limitation of 40 percent of AMGI.) Because all of the units in the project are low-income units, converting a market-rate unit to a low-income unit is not an available mitigating action. Within 60 calendar days following the close of Year 2, the taxpayer identifies Unit #2 as a removed unit. (Unit #2 has a designated imputed income limitation of 80 percent of AMGI.) Repair work on Unit #4 is completed in Year 4, and the taxpayer then ends the status of Unit #2 as a removed unit.

(ii) *Analysis.* During Year 2, Unit #4 is not a low-income unit because it is not suitable for occupancy under section 42(i)(3)(B). In the absence of any mitigating action, the average of the imputed income limitations of the units at the close of Year 2 would be 65 percent of AMGI. That average would be calculated as follows: $(1 \times 40\% + 1 \times 60\% + 2 \times 80\%)/4 = 65\%$. Under paragraph (d)(2) of this section, unless effective mitigating action is taken not later than the 60th calendar day following the close of Year 2, the project fails to be a qualified low-income housing project because it fails to satisfy paragraph (a)(3) of this section. As described in the facts in paragraph (g)(2)(i) of this section, however, the

taxpayer takes the mitigating action in paragraph (e)(2) of this section. That action has the following results:

(A) *Average income test.* Under paragraph (f)(2) of this section, the identification of Unit #2 as a removed unit causes that unit not to be taken into account in computing the average of the imputed income limitations of the low-income units. Unit #4 is also not taken into account because it is no longer a low-income unit. Therefore, the calculation under paragraph (a)(3) of this section as of the close of Years 2 and 3 is as follows: $(1 \times 40\% + 1 \times 60\% + 1 \times 80\%)/3 = 60\%$. Thus, for those years, the project satisfies the average income test because, for purposes of that test, at least 40 percent of the units are taken into account as low-income units and the average of the imputed income limitations of those units does not exceed 60% of AMGI.

(B) *Recapture.* At the close of Year 2, the amount of the qualified basis is less than the amount of the qualified basis at the close of Year 1, because Unit #4's unsuitability for occupancy prohibits it from being a low-income unit. Unit #4's failure to be a low-income unit, therefore, reduces the applicable fraction and thus the qualified basis as well. This results in a credit recapture amount for Year 2. Under paragraph (f)(2) of this section, however, for purposes of calculating the recapture amount, Unit #2's status as a removed unit does not impair its contribution to the applicable fraction and the qualified basis.

(C) *Restoration of habitability and of qualified basis.* As described in the facts in paragraph (g)(2)(i) of this section, in Year 4, after repair work is complete, the formerly uninhabitable Unit #4 is again suitable for occupancy, and the taxpayer ends the status of Unit #2 as a removed unit. Thus, both units are now low-income units, neither is a removed unit, and so both are included in the computations for the average income test. At the close of Year 4, therefore, the average of the imputed income limitations of all of the low-income units in the project is 60 percent of AMGI, which is calculated as follows: $(2 \times 40\% + 1 \times 60\% + 2 \times 80\%)/5 = 60\%$. For purposes of computing the credit under section 42(a) for Year 4, both units are included in the applicable fraction and, thus, are included in qualified basis for purposes of that calculation. Prior to the restoration in Year 4, for purposes of a computation of credits under section 42(a), Unit #4 does not contribute to qualified basis because it is not a low-income unit, and, under paragraph (f)(3) of this section, Unit #2 does not contribute to qualified basis because it is a removed unit.

(h) *Applicability dates.* This section applies to taxable years beginning after [date these regulations are published as final regulations in the **Federal Register**].

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2020–20221 Filed 10–29–20; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2020–0174, FRL–10014–77–Region 10]

Air Plan Approval; Washington: Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve revisions to the Washington State Implementation Plan (SIP) submitted by the State of Washington on June 2, 2019, through the Washington Department of Ecology. The proposed revision, applicable in Clark, King, Pierce, Snohomish, and Spokane Counties, Washington, removes the Inspection and Maintenance (I/M) program, which was previously approved into the SIP for use as a component of the State's plans to address on-road sources in nonattainment areas. The SIP revision also includes a demonstration that the requested revision to the vehicle model year coverage will not interfere with attainment or maintenance of any national ambient air quality standard (NAAQS) or with any other applicable requirement of the Clean Air Act (CAA or Act). The I/M program will be moved from the active portion of the SIP to the contingency portion of the applicable SIP for each area. The EPA evaluated whether this SIP revision would interfere with the requirements of the CAA. The EPA is proposing to determine that Washington's June 2, 2019 SIP revision is consistent with the applicable portions of the CAA.

DATES: Comments must be received on or before November 30, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2020–0174, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which 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.*

FOR FURTHER INFORMATION CONTACT: Karl Pepple, EPA Region 10, 1200 Sixth Avenue—Suite 155, Seattle, WA 98101, at (206) 553–1778, or *pepple.karl@epa.gov.*

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

I. Background

Each state has a SIP containing the control measures and strategies used to attain and maintain the NAAQS established by the EPA for the criteria pollutants (carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, sulfur dioxide). The SIP contains such elements as air pollution control regulations, emission inventories, attainment demonstrations, and enforcement mechanisms. Section 110 of the CAA requires each state to periodically revise its SIP. As a result, the SIP is a living compilation of regulatory and non-regulatory elements that are updated to address federal requirements and changing air quality issues in the state.

The Washington Department of Ecology (Ecology) implements and enforces the Washington SIP through rules set out in the Washington Administrative Code (WAC). Chapter 173–422 WAC, which details Washington's I/M program, applies in parts of Clark, King, Pierce, Snohomish, and Spokane Counties. The Department of Ecology included an I/M program in nonattainment SIPs in the 1980s for CO, as required by the Clean Air Act

Amendments of 1977.[1] The I/M program was later included in SIPs for ozone and PM_{10} in the 1990s.[2] [3] [4] [5] These nonattainment SIPs accomplished their purpose, as these areas were all redesignated to attainment with approved maintenance plans. Currently there are no nonattainment areas in the state of Washington. Ecology has requested that EPA, in acting upon this SIP submission, remove these I/M program requirements from the above-referenced portions of the SIP.

The State Legislature adopted a modification to the Washington Emission Check I/M program in 2005, which established an end date for the state program of December 31, 2019. This same legislative action also adopted California's Low Emission Vehicle (LEV) program starting with model year 2009, and exempted both 2009 and newer vehicles as well as vehicles over 25 years old from I/M requirements. On June 2, 2019 Ecology submitted a SIP to the EPA moving the I/M program to the contingency portion of each relevant SIP.

In this submission, Ecology opted to move the I/M program to the contingency measure portion of the applicable SIP for all five counties. Clark, King, and Pierce Counties are beyond the 20-year maintenance period for CO. The 1-hour ozone NAAQS was revoked,[6] but the counties of Clark, King, and Pierce would be beyond the 20-year maintenance period had the NAAQS remained in place. Of the five impacted counties, only the King-Pierce-Snohomish PM_{10} area and the Spokane carbon monoxide (CO) area are not beyond the 20-year maintenance period required by the CAA. Ecology is moving the I/M program to the contingency measure portion of each SIP for all areas in the state that had implemented I/M.

Under CAA section 175A and 40 CFR 51.372 of the I/M regulations, areas that have been redesignated to attainment may move control measures from the active portion of their SIP to the contingency measures portion of their maintenance plans if they can demonstrate that such a SIP revision would not interfere with attainment or maintenance of the NAAQS, per section 110(l) of the CAA. Some of these counties were redesignated to attainment more than 20 years ago for some of the pollutants at issue (*e.g.,* Clark, King, and Pierce for CO and 1-hour ozone). The state is opting to retain I/M as a contingency measure for all counties and for all the applicable NAAQS.

Contingency measures, in this case, are the list of measures that Ecology will consider if a violation of the NAAQS occurs in the future in one of these maintenance areas. In the event of a future violation, Ecology commits to work with the local clean air agency to determine the cause of the violation. If mobile source emissions are indicated and an I/M program could address the violation, Ecology commits to work with the state legislature to acquire the authority to adopt and implement the I/M program.

II. Applicable Authorities for Moving the I/M Program to a Contingency Measure in the Washington SIP

Section 110(l) of the CAA requires that each revision to a SIP submitted by a State under the Act shall be adopted by the State after reasonable notice and public hearing. The Administrator shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act. The I/M regulations (40 CFR 51.372(c)) provide that I/M can be moved to the contingency portion of the SIP.

A State's obligation to comply with each of the NAAQS is considered as ''any applicable requirement(s) concerning attainment.'' A demonstration is necessary to show that this revision will not interfere with attainment or maintenance of the NAAQS, including those for CO, ozone, or any other requirement of the Act.

Three areas in Washington state were formerly designated as CO nonattainment areas. Both the Spokane CO Nonattainment area (Spokane County) and the Puget Sound CO nonattainment area (King, Pierce, and portions of Snohomish Counties) were classified as ''Moderate'' with a design value over 12.7 ppm. The Vancouver CO nonattainment area was classified as a Moderate' area with a design value less than 12.7 ppm. Based on these nonattainment designations, classifications and the area populations, a basic I/M program was required in the Vancouver area, while enhanced I/M programs were required in the Puget Sound and Spokane CO nonattainment areas. The EPA redesignated the Puget Sound area to attainment for the CO standard in a final action effective November 11, 1996 (61 FR 53323, October 11, 1996). The Vancouver area was redesignated to attainment in a final action effective October 21, 1996 (61 FR 54560, October 21, 1996). Finally, the Spokane area was redesignated to attainment in a final action effective August 29, 2005 (70 FR 37269, June 29, 2005). All three of these areas submitted the required second 10-year maintenance plans, with Spokane and Vancouver converting to Limited Maintenance Plans. The EPA approved these maintenance plans.[7]

Four counties in Washington were designated as nonattainment for the 1-hour ozone NAAQS: King, Pierce, and Snohomish Counties, making up the Seattle-Tacoma area, and Clark County, part of the Portland-Vancouver area. These counties in Washington were already implementing I/M due to earlier CO requirements. The EPA redesignated the Seattle-Tacoma area to attainment for the 1-hour ozone standard in a final action effective November 25, 1996 (61 FR 50438, September 26, 1996). The EPA approved the second 10-year maintenance plan for the Seattle-Tacoma before revocation of the 1-hour NAAQS.[8] Regarding Clark County, the only county in Washington that was part of the Portland-Vancouver 1-hour ozone NAAQS nonattainment area, the EPA redesignated the area to attainment for the 1-hour ozone standard in a final action effective June 18, 1997 (62 FR 27204, May 19, 1997). The 1-hour ozone NAAQS was revoked before a second 10-year maintenance plan was submitted.

King, Pierce, and Snohomish Counties, the ''Seattle-Kent-Tacoma area,'' were formerly designated nonattainment for the PM_{10} NAAQS. Designation as nonattainment for particulate matter does not trigger I/M requirements. However, in the development of the PM_{10} nonattainment SIP, Ecology included reference to the existing I/M program as a measure to reduce other CO and ozone precursors. The EPA redesignated the Seattle-Kent-Tacoma area to attainment for the PM_{10}

[1] Ecology began an I/M program in King, Pierce, and Snohomish Counties (the Seattle-Tacoma area). In 1985 the program was extended to the Vancouver portion of the Portland nonattainment area (Clark County), and the Spokane area (Spokane County).

[2] Ozone is not directly emitted from mobile sources. These sources emit volatile organic compounds (VOCs) and nitrogen oxides (NO_X), which can react in the presence of sunlight to form ozone.

[3] Ecology submitted ozone nonattainment SIPs for the Puget Sound area (King, Pierce, and Snohomish Counties) and the Vancouver portion (Clark County) of the Portland-Vancouver nonattainment area that listed I/M as a control measure.

[4] PM_{10} is particulate matter 10 micrometers and smaller in diameter.

[5] Ecology submitted PM_{10} nonattainment SIPs for the Seattle-Kent-Tacoma area (King, Pierce, and Snohomish Counties) that listed I/M as a control measure.

[6] 69 FR 23951; April 30, 2004.

[7] Vancouver: 73 FR 36439, June 27, 2008; Spokane: 81 FR 45419, July 14, 2016.

[8] 69 FR 47365, August 5, 2004.

standard in a final action effective May 14, 2001 (66 FR 14492, March 13, 2001).

III. Evaluation of Submission

A. Vehicle Emission Trends in Washington State

The June 2, 2019, Washington SIP submittal seeking removal of the I/M Program from the active portion of the SIP includes an evaluation of projected changes in mobile source emissions in the future. The analysis focuses on the emissions of: CO, NO_X and VOC (both of which are precursors to the 1-hour ozone), and $PM_{2.5}$.[9] Ecology used the EPA's MOVES2014a model to assess emissions for years 2005, 2010, 2015, 2019, 2020, 2025, 2030, 2035, and 2040.

Table 1 of this preamble, shows the percent difference in the mobile source emissions reductions between calendar year 2019, the last year of I/M implementation, with 2020, the first year without I/M. The I/M program in 2019 applied to vehicle model years 1994 through 2008. The assumptions in Table 1 account for increases in vehicle miles of travel in each county. The assessments in Table 1 correspond to the seasons in which the former nonattainment area had established motor vehicle emissions budgets.

Assessed wintertime CO emissions continue to decrease in King, Pierce, Snohomish, and Spokane Counties. These reductions are the result of fleet turnover, and the implementation of more stringent engine standards in the newer vehicles. There is a projected 0.4% increase in wintertime CO emissions from Clark County in calendar year 2020.

Projected summertime CO emissions demonstrate a similar pattern, with all counties except for Clark demonstrating continued reductions. Clark County is projected to experience a 2.5% increase in CO emissions in calendar year 2020. Clark County experiences a slight increase in both winter and summer CO emissions with removal of the I/M program. This seems to be the result of a combination of the growth rate in Clark County, combined with a generally older vehicle fleet. As these older vehicles are replaced with new vehicles, the emissions reductions are projected to resume, but at a slightly slower rate than with an I/M program.

Ozone, a criteria pollutant, is formed in photochemical reactions in the atmosphere involving NO_X and VOCs. Ecology projected differences in ozone precursor emissions for 2019 and 2020. All assessed counties are projected to continue to experience reductions in NO_X. Most counties are also projected to experience reductions in VOCs as well. The exception is Clark County, which is projected to experience a 0.3% increase in VOC emissions in calendar year 2020. As explained earlier, this temporary increase is due to the combination of the growth rate in Clark County and a slightly older vehicle population.

Ecology also calculated winter $PM_{2.5}$ impacts for Pierce County. An I/M program is not required by the CAA for PM areas. In fact, the MOVES model calculates no benefit to PM concentrations from an I/M program. The $PM_{2.5}$ benefits represented in Table 1 are due to fleet turnover and continued implementation of new engine and fuel standards.

TABLE 1—PERCENT DIFFERENCE IN ON-ROAD EMISSIONS BETWEEN 2019 (With I/M) AND 2020 (Without I/M)

Pollutant	County				
	Clark	King	Pierce	Snohomish	Spokane
Winter CO	0.4	–1.6	–1.8	–1.6	–1.6
Summer CO	2.5	–0.3	–0.5	–0.4	–
Summer NO_X	–4.7	–7.5	–6.9	–7.1	–
Summer VOC	0.3	–2.0	–1.7	–1.7	–
Winter $PM_{2.5}$	–	–	–6.2	–	–

Ecology also estimated long-term emission reductions in these counties. The MOVES modeling looked at an outlying year of 2040. Despite increased vehicle miles traveled in each county, emissions continue to decrease after removal of the I/M program.

TABLE 2—PERCENT DIFFERENCE IN ON-ROAD VMT AND EMISSIONS BETWEEN 2000 AND 2040

	County				
	Clark	King	Pierce	Snohomish	Spokane
Average Daily VMT	126	17	38	36	45
Winter CO emissions	–88	–91	–91	–91	–91
Summer CO emissions	–86	–91	–91	–90	–
Summer NO_X emissions	–90	–95	–95	–94	–
Summer VOC emissions	–85	–90	–88	–88	–
Winter $PM_{2.5}$ emissions	–	–		–	–

In summary, emissions in the five Washington Counties are generally projected to decrease even if the I/M program is discontinued. Emissions of CO and VOC are projected to increase in Clark County in 2020; however, the overall downward trend of emissions continues after 2020. This continued decrease in emissions, despite increases in VMT, are the result of fleet turnover, with old vehicles being replaced with new vehicles that meet more stringent engine standards. In addition, because the I/M program was applying to a decreasing population of vehicles in the five counties [10] emissions reductions associated with the program also were expected to decrease. In sum, emissions

[9] PM_{10} was not analyzed due to on-road sources contributing a small percentage to the overall PM_{10} concentrations.

[10] Vehicle model years 2009 and newer were exempted from the I/M program, as well as vehicles 25 years old and older.

are anticipated to continue decreasing into the future as the fleet turns over, despite projected increases in vehicle miles of travel in these areas.

The EPA reviewed the on-road modeling performed by the Washington Department of Ecology. These emissions trends agree with EPA projections of on-road emissions. This emission trends analysis shows that emission decreases are expected even if the proposed SIP revision is approved. It thus demonstrates generally that any change in emissions associated with the removal of the I/M program are relatively minor compared to the emission reductions associated with the turnover of older, higher emitting vehicles for newer, lower-emitting vehicles.

B. Monitoring Values and Event Data

All areas in the state of Washington are either designated as attainment/unclassifiable, unclassifiable, or attainment for the NAAQS.[11] Areas are designated as attainment/unclassifiable when the design value shows it is below the NAAQS for the criteria pollutant in question. Areas are designated unclassifiable when there is insufficient data for either an attainment/unclassifiable or a nonattainment classification. Areas designated attainment have been redesignated to attainment with an approved maintenance plan. At this time, there are no nonattainment areas in Washington. Designations are based on design values, which are calculated from monitoring data. The Washington Department of Ecology meets all monitoring requirements.

Ecology addressed air quality design values for CO, NO_2, and ozone in the five I/M counties as part of this submittal. The 2017 design values included in this submittal were based on 2015–2017 data, which represent the latest available data when the SIP was developed and submitted. Design values for CO and NO_2 were well below the NAAQS. It should be noted that some monitors have been discontinued due to consistent low concentrations as compared to the NAAQS.

Ozone design values for Clark (63 ppb) and Spokane (62 ppb) Counties were below the 2015 8-hour ozone NAAQS of 70 ppb. However, the 3-year design value for the Enumclaw monitor in King County had a design value of 76 ppb, which is above the NAAQS. This design value is the result of wildfire impacts in addition to typical emissions in King County. Here, ''typical emissions'' refers to usual anthropogenic emissions produced by mobile sources, area sources, and point sources on a representative seasonal day.

C. Clean Air Act Section 110(l)

Section 110(l) of the Clean Air Act (CAA) provides that ''. . . The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in [CAA section 171]) or any other applicable requirement of [the CAA].'' 42 U.S.C. 7410(*l*). Section 110(l) applies to all requirements of the CAA and to all areas of the country, whether attainment, nonattainment, unclassifiable or maintenance for one or more of the six criteria pollutants. EPA interprets section 110(l) as applying to all NAAQS that are in effect, including those for which SIP submissions have not been made. EPA considers the impact of the SIP revision on emissions and/or ambient concentrations of any pollutant. Additionally, a state may substitute equivalent emissions reductions to compensate for any change to a plan to ensure actual emissions to the air are not increased and thus preserve status quo air quality.

All areas within the state of Washington are designated attainment for all NAAQS. These areas are attaining with current on-road emission levels. On-road emissions will continue to decrease as older vehicles are replaced with newer, lower-emitting vehicles. Continued emissions decreases are projected to occur despite population growth due to engine and fuel standards. These same controls will continue the downward trend in on-road emissions even if this SIP revision is approved.

The emission trends analysis for King County also shows that on-road emissions generally will continue to decrease even if the proposed SIP revision is approved. In addition, Ecology provided a detailed analysis of the causes for the high values at the Enumclaw monitor in King County. As illustrated by Ecology, the Enumclaw monitor was significantly impacted by wildfire smoke in 2017. The 4th highest ozone value at the Enumclaw monitor in 2017 was 94 ppb. In comparison, the 4th highest value in 2018 at the same monitor was 77 ppb. There was significantly less wildfire smoke in 2018 compared to 2017. The 4th highest value in 2019 was 55 ppb. The higher values in Enumclaw were a result of wildfire smoke related impacts and unrelated to any anthropogenic sources of emissions (mobile, area, or stationary) that occur on a typical day.

Based on our evaluation of the analysis submitted by the state of Washington, the EPA proposes to conclude that the removal of the I/M program will not interfere with attainment or maintenance of the NAAQS.

IV. What action is EPA proposing?

The EPA is proposing to approve and incorporate by reference in the Washington SIP at 40 CFR 52.2470(c) the submittal moving the I/M program located at WAC 173–422 from the actively implemented portion of the Washington SIP to the contingency measure portion of the SIP. The EPA believes Ecology's demonstration of continued attainment meets Section 110(l) requirements. The EPA is requesting comments on the proposed approval.

V. Incorporation by Reference

In this document, the EPA is proposing to remove, in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to remove the current incorporation by reference of WAC Chapter 173–422 as identified in Section I of this preamble. 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).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided they meet the criteria of the CAA. Accordingly, this proposed 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 proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

[11] For a review of the National Ambient Air Quality Standards, averaging time, and form, please visit *https://www.epa.gov/criteria-air-pollutants/naaqs-table.* For a review of current and historical designations in the State of Washington by criteria pollutant, please visit *https://www.epa.gov/green-book.*

• Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

• 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 it does not involve technical standards; 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 methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land in Washington except as specifically noted further down in this paragraph and is also not approved to apply 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). Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the *Puyallup Tribe of Indians Settlement Act of 1989,* 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area. Consistent with EPA policy, the EPA provided a consultation opportunity to the Puyallup Tribe in a letter dated August 9, 2019.

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 record keeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: October 20, 2020.

Christopher Hladick,

Regional Administrator, Region 10.

[FR Doc. 2020–23635 Filed 10–29–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2020–0320; FRL–10016–06–Region 3]

Air Plan Approval; Pennsylvania; 1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the Youngstown-Warren-Sharon Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision pertains to the Commonwealth's plan, submitted by the Pennsylvania Department of Environmental Protection (PADEP), for maintaining the 1997 8-hour ozone national ambient air quality standard (NAAQS) (referred to as the ''1997 ozone NAAQS'') in the Pennsylvania portion of the Youngstown-Warren-Sharon, Ohio-Pennsylvania area. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before November 30, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2020–0320 at *https://www.regulations.gov,* or via email to *spielberger.susan@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://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Ramesh Mahadevan, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2237. Mr. Mahadevan can also be reached via electronic mail at *mahadevan.ramesh@epa.gov.*

SUPPLEMENTARY INFORMATION: On March 10, 2020, PADEP submitted a revision to the Pennsylvania SIP to incorporate a plan for maintaining the 1997 ozone NAAQS in the Pennsylvania portion of the Youngstown-Warren-Sharon Area through November 19, 2027, in accordance with CAA section 175A. The submittal is titled, ''State Implementation Plan Revision: second maintenance plan for the Youngstown-Warren-Sharon, OH-PA Interstate 1997 8-Hour Ozone Nonattainment Area.'' The portion of the Area located in Pennsylvania, which is the subject of this rulemaking, will be referred to as ''the Pennsylvania portion of the Youngstown-Warren-Sharon Area second maintenance plan'' throughout this document.

I. Background

In 1979, under section 109 of the CAA, EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm), averaged over a 1-hour period. 44 FR 8202 (February 8, 1979). On July 18, 1997 (62 FR 38856),[1] EPA revised the primary and

[1] In March 2008, EPA completed another review of the primary and secondary ozone standards and tightened them further by lowering the level for both to 0.075 ppm. 73 FR 16436 (March 27, 2008). Additionally, in October 2015, EPA completed a

secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period. EPA set the 1997 ozone NAAQS based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone NAAQS was set.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. On April 30, 2004 (69 FR 23858), EPA designated the Youngstown-Warren-Sharon Area as nonattainment for the 1997 ozone NAAQS. The entire Youngstown-Warren-Sharon Area consists of Mercer County in Pennsylvania and Trumbull, Mahoning and Columbiana Counties in Ohio.

Once a nonattainment area has three years of complete and certified air quality data that has been determined to attain the NAAQS, and the area has met the other criteria outlined in CAA section 107(d)(3)(E),[2] the state can submit a request to EPA to redesignate the area to attainment. Areas that have been redesignated by EPA from nonattainment to attainment are referred to as ''maintenance areas.'' One of the criteria for redesignation is to have an approved maintenance plan under CAA section 175A. The maintenance plan must demonstrate that the area will continue to maintain the standard for the period extending 10 years after redesignation, and it must contain such additional measures as necessary to ensure maintenance as well as contingency measures as necessary to assure that violations of the standard will be promptly corrected.

On October 19, 2007 (72 FR 59213 effective November 19, 2007), EPA approved a redesignation request (and maintenance plan) from PADEP for the Pennsylvania portion of the Youngstown-Warren-Sharon Area. In a separate action (72 FR 32190, June 12, 2007), EPA approved the redesignation request from the State of Ohio for Trumbull, Mahoning and Columbiana Counties. In accordance with section 175A(b), at the end of the eighth year after the effective date of the redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the standard for an additional 10 years.

EPA's final implementation rule for the 2008 ozone NAAQS revoked the 1997 ozone NAAQS and provided that one consequence of revocation was that areas that had been redesignated to attainment (*i.e.,* maintenance areas) for the 1997 ozone NAAQS no longer needed to submit second 10-year maintenance plans under CAA section 175A(b).[3] However, in *South Coast Air Quality Management District* v. *EPA*[4] (South Coast II), the United States Court of Appeals for the District of Columbia (D.C. Circuit) vacated EPA's interpretation that, because of the revocation of the 1997 ozone standard, second maintenance plans were not required for ''orphan maintenance areas,'' (*i.e.,* areas like the Youngstown-Warren-Sharon Area) that had been redesignated to attainment for the 1997 ozone NAAQS and were designated attainment for the 2008 ozone NAAQS. Thus, states with these ''orphan maintenance areas'' under the 1997 ozone NAAQS must submit maintenance plans for the second maintenance period.

As previously discussed, CAA section 175A sets forth the criteria for adequate maintenance plans. In addition, EPA has published longstanding guidance that provides further insight on the content of an approvable maintenance plan, explaining that a maintenance plan should address five elements: (1) An attainment emissions inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan. The 1992 Calcagni Memo[5] provides that states may generally demonstrate maintenance by either performing air quality modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that future emissions of a pollutant and its precursors will not exceed the level of emissions during a year when the area was attaining the NAAQS (*i.e.,* attainment year inventory). See 1992 Calcagni Memo at p. 9. EPA further clarified in three subsequent guidance memos describing ''limited maintenance plans'' (LMPs)[6] that the requirements of CAA section 175A could be met by demonstrating that the area's design value[7] was well below the NAAQS and that the historical stability of the area's air quality levels showed that the area was unlikely to violate the NAAQS in the future. Specifically, EPA believes that if the most recent air quality design value for the area is at a level that is below 85% of the standard, or in this case below 0.071 ppm, then EPA considers the state to have met the section 175A requirement for a demonstration that the area will maintain the NAAQS for the requisite period. Accordingly, on March 10, 2020, PADEP submitted an LMP for the Pennsylvanian portion of the Youngstown-Warren-Sharon Area, following EPA's LMP guidance and demonstrating that the area will maintain the 1997 ozone NAAQS through November 19, 2027, *i.e.,* through the entire 20-year maintenance period.

II. Summary of SIP Revision and EPA Analysis

PADEP's March 10, 2020 SIP submittal outlines a plan for continued maintenance of the 1997 ozone NAAQS which addresses the criteria set forth in the 1992 Calcagni Memo as follows.

A. Attainment Emissions Inventory

For maintenance plans, a state should develop a comprehensive and accurate inventory of actual emissions for an attainment year which identifies the level of emissions in the area which is sufficient to maintain the NAAQS. The inventory should be developed consistent with EPA's most recent guidance. For ozone, the inventory should be based on typical summer day's emissions of oxides of nitrogen (NO_X) and volatile organic compounds (VOC), the precursors to ozone formation. In the first maintenance plan for the Pennsylvania portion of the Youngstown-Warren-Sharon Area, PADEP used 2004 for the attainment year inventory, because 2004 was one of

review of the primary and secondary ozone standards and tightened them by lowering the level for both to 0.70 ppm. 80 FR 65292 (October 26, 2015).

[2] The requirements of CAA section 107(d)(3)(E) include attainment of the NAAQS, full approval under section 110(k) of the applicable SIP, determination that improvement in air quality is a result of permanent and enforceable reductions in emissions, demonstration that the state has met all applicable section 110 and part D requirements, and a fully approved maintenance plan under CAA section 175A.

[3] See 80 FR 12315 (March 6, 2015).

[4] 882 F.3d 1138 (D.C. Cir. 2018).

[5] ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (1992 Calcagni Memo).

[6] See ''Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas'' from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas'' from Joseph Paisie, OAQPS, dated October 6, 1995; and ''Limited Maintenance Plan Option for Moderate PM_{10} Nonattainment Areas'' from Lydia Wegman, OAQPS, dated August 9, 2001.

[7] The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone nonattainment area is the highest design value of any monitoring site in the area.

the years in the 2004–2006 three-year period when the area first attained the 1997 ozone NAAQS.[8] The entire Youngstown-Warren-Sharon Area continued to monitor attainment of the 1997 ozone NAAQS in 2014. Therefore, the emissions inventory from 2014 represents emissions levels conducive to continued attainment (*i.e.,* maintenance) of the NAAQS. Thus, PADEP is using 2014 as representing attainment level emissions for its second maintenance plan. Pennsylvania used 2014 summer day emissions from EPA's 2014 version 7.0 modeling platform as the basis for the 2014 inventory presented in Table 1.[9]

TABLE 1—2014 TYPICAL SUMMER DAY NO_X AND VOC EMISSIONS FOR THE ENTIRE YOUNGSTOWN-WARREN-SHARON AREA

[Tons/day]

County	Source category	NO_X emissions	VOC emissions
Mercer (PA)	Point	1.93	1.34
	Nonpoint	1.70	16.74
	Onroad	8.21	2.43
	Nonroad	1.53	2.76
Columbiana (OH)	Point	0.39	0.62
	Nonpoint	3.18	5.95
	Onroad	3.69	2.39
	Nonroad	1.00	2.28
Mahoning (OH)	Point	2.35	1.00
	Nonpoint	3.16	10.35
	Onroad	8.15	4.24
	Nonroad	2.10	2.61
Trumbull (OH)	Point	2.41	2.05
	Nonpoint	2.49	7.68
	Onroad	7.87	4.27
	Nonroad	2.04	2.07

The data shown in Table 1 is based on the 2014 National Emissions Inventory (NEI) version 2.[10] The inventory addresses four anthropogenic emission source categories: Stationary (point) sources, stationary nonpoint (area) sources, nonroad mobile, and onroad mobile sources. Point sources are stationary sources that have the potential to emit (PTE) more than 100 tons per year (tpy) of VOC, or more than 50 tpy of NO_X, and which are required to obtain an operating permit. Data are collected for each source at a facility and reported to PADEP. Examples of point sources include kraft mills, electrical generating units (EGUs), and pharmaceutical factories. Nonpoint sources include emissions from equipment, operations, and activities that are numerous and in total have significant emissions. Examples include emissions from commercial and consumer products, portable fuel containers, home heating, repair and refinishing operations, and crematories. The onroad emissions sector includes emissions from engines used primarily to propel equipment on highways and other roads, including passenger vehicles, motorcycles, and heavy-duty diesel trucks. The nonroad emissions sector includes emissions from engines that are not primarily used to propel transportation equipment, such as generators, forklifts, and marine pleasure craft.

EPA reviewed the emissions inventory submitted by PADEP and proposes to conclude that the plan's inventory is acceptable for the purposes of a subsequent maintenance plan under CAA section 175A(b).

B. Maintenance Demonstration

In order to attain the 1997 ozone NAAQS, the three-year average of the fourth-highest daily average ozone concentrations (design value, or ''DV'') at each monitor within an area must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, appendix I, the standard is attained if the DV is 0.084 ppm or below. CAA section 175A requires a demonstration that the area will continue to maintain the NAAQS throughout the duration of the requisite maintenance period. Consistent with the prior guidance documents discussed previously in this document as well as EPA's November 20, 2018 ''Resource Document for 1997 Ozone NAAQS Areas: Supporting Information for States Developing Maintenance Plans'' (2018 Resource Document),[11] EPA believes that if the most recent DV for the area is well below the NAAQS (*e.g.,* below 85%, or in this case below 0.071 ppm), the section 175A demonstration requirement has been met, provided that prevention of significant deterioration requirements, any control measures already in the SIP, and any Federal measures remain in place through the end of the second 10-year maintenance period (absent a showing consistent with section 110(l) that such measures are not necessary to assure maintenance).

For the purposes of demonstrating continued maintenance with the 1997 ozone NAAQS, PADEP provided 3-year DVs at monitors located in the entire Youngstown-Warren-Sharon Area from 2007 to 2018. This includes DVs at monitors for 2005–2007, 2006–2008, 2007–2009, 2008–2010, 2009–2011, 2010–2012, 2011–2013, 2012–2014, 2013–2015, 2014–2016, 2015–2017, and 2016–2018, which are shown in Table

[8] For more information, see EPA's July 27, 2007 notice proposing to redesignate the Youngstown-Warren-Sharon Area to attainment for the 1997 ozone NAAQS (72 FR 41246).

[9] For more information, visit *https://www.epa.gov/sites/production/files/2018-11/ozone_1997_naaqs_emiss_inv_data_nov_19_2018_0.xlsx.*

[10] The NEI is a comprehensive and detailed estimate of air emissions of criteria pollutants, criteria precursors, and hazardous air pollutants from air emissions sources. The NEI is released every three years based primarily upon data provided by State, Local, and Tribal air agencies for sources in their jurisdictions and supplemented by data developed by EPA.

[11] This resource document is included in the docket for this rulemaking available online at *https://www.regulations.gov,* Docket ID: EPA–R03–OAR–2020–0320 and is also available at *https://www.epa.gov/sites/production/files/2018-11/documents/ozone_1997_naaqs_lmp_resource_document_nov_20_2018.pdf.*

2.[12] In addition, EPA has reviewed the most recent ambient air quality monitoring data for ozone in the entire Youngtown-Warren-Sharon Area, as submitted by Pennsylvania and recorded in EPA's Air Quality System (AQS). The most recent DVs (*i.e.,* 2017–2019) at monitors located in the entire Youngstown-Warren-Sharon Area are also shown in Table 2.[13]

TABLE 2—1997 OZONE NAAQS DESIGN VALUES IN ppm FOR THE ENTIRE YOUNGSTOWN-WARREN-SHARON AREA

County	AQS site ID	2005–2007	2006–2008	2007–2009	2008–2010	2009–2011	2010–2012	2011–2013	2012–2014	2013–2015	2014–2016	2015–2017	2016–2018	2017–2019
Mercer(PA)	42–085–0100	0.083	0.080	0.077	0.074	0.073	0.079	0.077	0.075	0.068	0.069	0.068	0.069	0.067
Mercer(PA)	42–085–9991	.....	.....	.....	.....	.....	.....	.....	*0.066	0.063	0.065	0.066	0.065	0.063
Mahoning(OH)	39–099–0013	0.079	0.075	0.071	0.069	0.069	0.073	0.070	0.068	0.066	0.063	0.059	0.057	0.061
Trumbull(OH)	39–155–0009	0.079	0.076	0.075	0.072	0.071	0.073	0.069	0.067	.....	.....	.....	.....	.....
Trumbull(OH)	39–155–0011	0.084	0.081	0.076	0.074	0.074	0.079	0.076	0.072	0.067	0.068	0.068	0.069	0.067
Trumbull(OH)	39–155–0013	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.066	0.066	0.064

*The Mercer County monitor (42–085–9991) began operation on June 1, 2011. Its first valid design was for the 2012–2014 monitoring period.

As can be seen in Table 2, DVs at all monitors located in the entire Youngstown-Warren-Sharon Area have been well below 85% of the 1997 ozone NAAQS (*i.e.,* 0.071 ppm) since the 2013–2015 period. The highest DV for the 2017–2019 period at a monitor in the entire Youngstown-Warren-Sharon Area is 0.067 ppm, which is well below 85% of the 1997 ozone NAAQS.

Additionally, states can support the demonstration of continued maintenance by showing stable or improving air quality trends. According to EPA's 2018 Resource Document, several kinds of analyses can be performed by states wishing to make such a showing. One approach is to take the most recent DV at a monitor located in the area and add the maximum design value increase (over one or more consecutive years) that has been observed in the area over the past several years. For an area with multiple monitors, the highest of the most recent DVs should be used. A sum that does not exceed the level of the 1997 ozone NAAQS may be a good indicator of expected continued attainment. As shown in Table 2 of this document, the largest increase in DVs at a monitor located in the entire Youngstown-Warren-Sharon Area was 0.006 ppm, which occurred between the 2009–2011 (0.073 ppm) and 2010–2012 (0.079 ppm) DVs at the monitor located in Mercer PA (AQS ID 42–085–0100). Adding 0.006 ppm to the highest DV for the 2017–2019 period (0.067 ppm) results in 0.073 ppm, a sum that is still below the 1997 ozone NAAQS.

The entire Youngstown-Warren-Sharon Area has maintained air quality levels below the 1997 ozone NAAQS since the Area first attained the NAAQS in 2006.[14] Additional supporting information that the area is expected to continue to maintain the standard can be found in projections of future year DVs that EPA recently completed to assist states with the development of interstate transport SIPs for the 2015 8-hour ozone NAAQS. Those projections, made for the year 2023, show that the highest DV at a monitor located in the entire Youngstown-Warren-Sharon Area is expected to be 0.0608 ppm.[15] Therefore, EPA determines that future violations of the 1997 ozone NAAQS in the Pennsylvania portion of the Youngstown-Warren-Sharon Area are unlikely.

C. Continued Air Quality Monitoring and Verification of Continued Attainment

Once an area has been redesignated to attainment, the state remains obligated to maintain an air quality network in accordance with 40 CFR part 58, in order to verify the area's attainment status. In the March 10, 2020 submittal, PADEP commits to continue to operate its air monitoring network in accordance with 40 CFR part 58. PADEP also commits to track the attainment status of the Pennsylvania portion of the Youngstown-Warren-Sharon Area for the 1997 ozone NAAQS through the review of air quality and emissions data during the second maintenance period. This includes an annual evaluation of vehicles miles traveled (VMT) and stationary source emissions data compared to the assumptions included in the LMP. PADEP also states that it will evaluate the periodic (*i.e.,* every three years) emission inventories prepared under EPA's Air Emission Reporting Requirements (40 CFR part 51, subpart A). Based on these evaluations, PADEP will consider whether any further emission control measures should be implemented for the Pennsylvania portion of the Youngstown-Warren-Sharon Area. EPA has analyzed the commitments in PADEP's submittal and is proposing to determine that they meet the requirements for continued air quality monitoring and verification of continued attainment.

D. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must require that the state will implement all pollution control measures that were contained in the SIP before redesignation of the area to attainment. See section 175(A)(d) of the CAA.

EPA previously approved a second maintenance plan for the Ohio portion of the Youngstown-Warren-Sharon Area that included contingency measures for the Ohio portion of the area. 84 FR

[12] See also Table II–2 of PADEP's March 10, 2020 submittal, included in the docket for this rulemaking available online at *https://www.regulations.gov,* Docket ID: EPA–R03–OAR–2020–0320.

[13] This data is also included in the docket for this rulemaking available online at *https://www.regulations.gov,* Docket ID: EPA–R03–OAR–2020–0320 and is also available at *https://www.epa.gov/air-trends/air-quality-design-values#report.*

[14] As explained in EPA's July 27, 2007 notice proposing to redesignate the Youngstown-Warren-Sharon Area as attainment for the 1997 ozone NAAQS (72 FR 41246), the 2004–2006 DV for the Youngstown-Warren-Sharon Area was 0.083 ppm.

[15] See U.S. EPA, ''Air Quality Modeling Technical Support Document for the Updated 2023 Projected Ozone Design Values,'' Office of Air Quality Planning and Standards, dated June 2018, available at *https://www.epa.gov/airmarkets/air-quality-modeling-technical-support-document-updated-2023-projected-ozone-design.*

63806 (November 19, 2019). This proposed rulemaking action for the Pennsylvania portion of the Youngstown-Warren-Sharon Area discusses the November 19, 2019 final action as background. This proposed rulemaking is not reopening nor does it solicit any additional comments on EPA's November 19, 2019 final approval of the second maintenance plan for the Ohio portion of the Youngstown-Warren-Sharon Area.

Ohio identified a partial list of contingency measures to be considered from ''a comprehensive list of measures deemed appropriate and effective at the time the selection is made. The selection of measures will be based upon cost-effectiveness, emission reduction potential, economic and social considerations or other factors that Ohio deems appropriate. Ohio will solicit input from all interested and affected persons in the maintenance area prior to selecting appropriate contingency measures.'' 84 FR 42885 (August 19, 2019). The non-exhaustive list of potential contingency measures identified by Ohio, and previously approved by EPA, is set forth in EPA's proposal for that prior action. 84 FR 42885 (August 19, 2019).

PADEP's March 10, 2020 submittal includes a contingency plan for the Pennsylvania portion of the Youngstown-Warren-Sharon Area. In the event that the fourth highest eight-hour ozone concentrations at a monitor anywhere in the entire Youngstown-Warren-Sharon Area exceeds 84 ppb (equivalent to 0.084 ppm) for two consecutive years, but prior to an actual violation of the NAAQS, PADEP, in cooperation with the Ohio Environmental Protection Agency, will evaluate whether additional local emission control measures should be implemented that may prevent a violation of the NAAQS.[16] After analyzing the conditions causing the excessive ozone levels, evaluating the effectiveness of potential corrective measures, and considering the potential effects of Federal, state, and local measures that have been adopted but not yet implemented, PADEP will begin the process of implementing selected measures so that they can be implemented as expeditiously as practicable following a violation of the NAAQS. In the event of a violation, PADEP commits to adopting additional emission reduction measures as expeditiously as practicable in accordance with the schedule included in the contingency plan as well as the CAA and applicable Pennsylvania statutory requirements. PADEP will use the following criteria when considering additional emission reduction measures to adopt to address a violation of the 1997 ozone NAAQS in the entire Youngstown-Warren-Sharon Area: (1) Air quality analysis indicating the nature of the violation, including the cause, location, and source; (2) emission reduction potential, including extent to which emission generating sources occur in the nonattainment area; (3) timeliness of implementation in terms of the potential to return the area to attainment as expeditiously as practicable; and (4) costs, equity, and cost-effectiveness. The measures PADEP would consider pursuing for adoption in the Pennsylvania portion of the Youngstown-Warren-Sharon Area include, but are not limited to, those summarized in Table 3.

PADEP commits to adopt and implement contingency measures for the 1997 ozone NAAQS in Pennsylvania portion the Youngstown-Warren-Sharon Area, as identified in Table 3.

TABLE 3—SECOND MAINTENANCE PLAN CONTINGENCY MEASURES FOR THE PENNSYLVANIA PORTION OF THE YOUNGSTOWN-WARREN-SHARON AREA

Non-Regulatory Measures:
Voluntary diesel engine ''chip reflash'' (installation software to correct the defeat device option on certain heavy-duty diesel engines).
Diesel retrofit (including replacement, repowering or alternative fuel use) for public or private local onroad or offroad fleets.
Idling reduction technology for Class 2-yard locomotives.
Idling reduction technologies or strategies for truck stops, warehouses, and other freight-handling facilities.
Accelerated turnover of lawn and garden equipment, especially commercial equipment, including promotion of electric equipment.
Additional promotion of alternative fuel (*e.g.,* biodiesel) for home heating and agricultural use.
Regulatory Measures: [17]
Additional control on consumer products.[18]
Additional controls on portable fuel containers.[19]

The contingency plan includes schedules for the adoption and implementation of both non-regulatory and regulatory contingency measures, including schedules for adopting potential land use planning strategies not listed in Table 3, which are summarized in Tables 4 and 5, respectively.

TABLE 4—IMPLEMENTATION SCHEDULE FOR NON-REGULATORY CONTINGENCY MEASURES IN THE PENNSYLVANIA PORTION OF THE YOUNGSTOWN-WARREN-SHARON AREA

Time after triggering event	Action
Within 2 months	PADEP will identify stakeholders for potential non-regulatory measures for further development.
Within 3 months	If funding is necessary, PADEP will identify potential sources of funding and the timeframe for when funds would be available.

[16] A violation of the NAAQS occurs when an area's 3-year design value exceeds the NAAQS.

[17] These regulatory measures were considered potential cost-effective and timely control strategies by the Ozone Transport Commission (OTC) as well as the Mid-Atlantic Regional Air Management Association and the Mid-Atlantic/Northeast Visibility Union. The OTC is a multi-state organization responsible for developing regional solutions to ground-level ozone pollution in the Northeast and Mid-Atlantic, including the development of model rules that member states may adopt. OTC member states include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia. For more information on the OTC, visit *https://otcair.org/index.asp*. To view the model rules developed by the OTC, including those for consumer products and portable fuel containers, visit *https://otcair.org/document.asp?fview=modelrules.*

[18] Pennsylvania's existing controls on consumer products are under 25 Pa. Code Chapter 130, Subchapters B and C (38 Pa.B. 5598). This contingency measure includes the adoption of additional controls on consumer products such as VOC limits for adhesive removers.

[19] Existing controls on portable fuel containers can be found under 40 CFR part 59, subpart F—Control of Evaporative Emissions from New and In-Use Portable Fuel Containers.

TABLE 4—IMPLEMENTATION SCHEDULE FOR NON-REGULATORY CONTINGENCY MEASURES IN THE PENNSYLVANIA PORTION OF THE YOUNGSTOWN-WARREN-SHARON AREA—Continued

Time after triggering event	Action
Within 6 months	PADEP will work with the relevant planning commission(s) to identify potential land use planning strategies and projects with quantifiable and timely emission benefits. PADEP will also work with the Pennsylvania Department of Community and Economic Development and other state agencies to assist with these measures.
Within 9 months	If state loans or grants are required, PADEP will enter into agreements with implementing organizations. PADEP will also quantify projected emission benefits.
Within 12 months	PADEP will submit revised SIP to EPA.
Within 12–24 months	PADEP will implement strategies and projects.

TABLE 5—IMPLEMENTATION SCHEDULE FOR REGULATORY CONTINGENCY MEASURES IN THE PENNSYLVANIA PORTION OF THE YOUNGSTOWN-WARREN-SHARON AREA

Time after triggering event	Action
Within 1 month	PADEP will submit request to begin regulatory development process.
Within 3 months	Request will be reviewed by the Air Quality Technical Advisory Committee (AQTAC), Citizens Advisory Council, and other advisory committees as appropriate.
Within 6 months	Environmental Quality Board (EQB) meeting/action.
Within 8 months	PADEP will publish regulatory measure in the Pennsylvania Bulletin for comment as proposed rule.
Within 10 months	PADEP will hold a public hearing and comment period on proposed rule.
Within 11 months	House and Senate Standing Committee and Independent Regulatory Review Commission (IRCC) comment on proposed rule.
Within 13 months	AQTAC, Citizens Advisory Council, and other committees will review responses to comment(s), if applicable, and the draft final rule.
Within 16 months	EQB meeting/action.
Within 17 months	The IRCC will take action on final rule.
Within 18 months	Attorney General's review/action.
Within 19 months	PADEP will publish the regulatory measure as a final rule in the Pennsylvania Bulletin and submit to EPA as a SIP revision. The regulation will become effective upon publication in the Pennsylvania Bulletin.

EPA proposes to find that the contingency plan included in PADEP's March 10, 2020 submittal satisfies the pertinent requirements of CAA section 175A(d). EPA notes that while six of the potential contingency measures included in the Commonwealth's second maintenance plan are non-regulatory, their inclusion among other measures is overall SIP-strengthening, and their inclusion does not alter EPA's proposal to find the LMP is fully approvable. EPA also finds that the submittal acknowledges Pennsylvania's continuing requirement to implement all pollution control measures that were contained in the SIP before redesignation of the entire Youngstown-Warren-Sharon Area to attainment.

E. Transportation Conformity

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS (CAA 176(c)(1)(B)). EPA's conformity rule at 40 CFR part 93 requires that transportation plans, programs and projects conform to SIPs and establish the criteria and procedures for determining whether or not they conform. The conformity rule generally requires a demonstration that emissions from the Regional Transportation Plan (RTP) and Transportation Improvement Program (TIP) are consistent with the motor vehicle emissions budget (MVEB) contained in the control strategy SIP revision or maintenance plan (40 CFR 93.101, 93.118, and 93.124). A MVEB is defined as ''that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions (40 CFR 93.101).''

Under the conformity rule, LMP areas may demonstrate conformity without a regional emission analysis (40 CFR 93.109(e)). However, because LMP areas are still maintenance areas, certain aspects of transportation conformity determinations still will be required for transportation plans, programs, and projects. Specifically, for such determination, RTPs, TIPs, and transportation projects still will have to demonstrate that they are fiscally constrained (40 CFR 93.108), meet the criteria for consultation (40 CFR 93.105 and 93.112) and transportation control measure implementation in the conformity rule provisions (40 CFR 93.113). Additionally, conformity determinations for RTPs and TIPs must be determined no less frequently than every four years, and conformity of plan and TIP amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104. In addition, for projects to be approved, they must come from a currently conforming RTP and TIP (40 CFR 93.114 and 93.115). The entire Youngstown-Warren-Sharon Area remains under the obligation to meet the applicable conformity requirements for the 1997 ozone NAAQS.

III. Proposed Action

EPA's review of PADEP's March 10, 2020 submittal indicates that it meets all applicable CAA requirements, specifically the requirements of CAA section 175A. EPA is proposing to approve the second maintenance plan for the Pennsylvania portion of the Youngstown-Warren-Sharon Area as a revision to the Pennsylvania SIP. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

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 proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant regulatory action under Executive Order 12866.
- 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, this proposed rulemaking, proposing approval of Pennsylvania's second maintenance plan for the Pennsylvania portion of the Youngstown-Warren-Sharon Area, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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: October 22, 2020

Cosmo Servidio,

Regional Administrator, Region III.

[FR Doc. 2020–23781 Filed 10–29–20; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 85, No. 211
Friday, October 30, 2020

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

October 26, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by November 30, 2020 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.

Food and Nutrition Service

Title: Supplemental Nutrition Assistance Program Forms: Applications, Periodic Reporting, and Notices.

OMB Control Number: 0584–0064.

Summary of Collection: The Food and Nutrition Act of 2008 (the Act), as amended, specifies national eligibility standards and imposes certain administrative requirements on State agencies in administering the program. Information must be collected from households to assure that they are eligible for the program and that they receive the correct amount of Supplemental Nutrition Assistance Program (SNAP) benefits. Information collected is limited to that necessary for the administration and enforcement of the SNAP Program. The Federal procedures for implementing the application and certification procedures in the Act are in Parts 271, 272, and 273 of the Title 7 of the Code of Federal Register.

Need and Use of the Information: FNS will collect information to determine the eligibility of households for the SNAP program and to determine the correct benefit levels for eligible households. If information is not collected to certify households in accordance with the Act or we change the frequency of information or reporting requirements as they relate to the application, certification, and continue eligibility of households would result in a direct violation of the Act and its implementing regulations. Further, benefits could be overissued or underissued for a long period of time if necessary information is not collected or actions are not taken timely.

Description of Respondents: 53 State, Local, and Tribal Government; 19,701,724 Individuals or Households.

Number of Respondents: 19,701,777.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Monthly; Quarterly.

Total Burden Hours: 124,187,297.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–23943 Filed 10–29–20; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 26, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by November 30, 2020 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.

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Rural Business-Cooperative Service

Title: Voluntary Labeling Program for Biobased Products.

OMB Control Number: 0570–0072.

Summary of Collection: The Commodity Credit Corporation (CCC) and the Rural Business-Cooperative Service (RBCS), announced the

availability of up to $100 million in competitive grants to eligible entities for activities designed to expand the sales and use of renewable fuels under the Higher Blends Infrastructure Incentive Program (HBIIP). Of the total amount of available funds, approximately $86 million are available to transportation fueling facilities (including fueling stations, convenience stores, hypermarket fueling stations, fleet facilities, and similar entities with capital investments) and approximately $14 million are available to fuel distribution facilities (including terminal operations, depots, and midstream partners), for eligible implementation activities related to higher blends of fuel ethanol, such as E15 or higher; greater than 10 percent ethanol and higher blends of biodiesel, such as B20 or higher; greater than 5 percent biodiesel. Cost-share grants of up to 50 percent of eligible project costs but not more than $5 million will be made available to assist transportation fueling and biodiesel distribution facilities. This information collection is needed for RBCS to identify eligible applicants seeking grant funds through the HBIIP and provide funding this fiscal year.

HBIIP is intended to encourage a more comprehensive approach to marketing higher blends biofuels by sharing the costs related to building out biofuel-related infrastructure. To be eligible for this program, a project's sole purpose must be to assist transportation fueling and biodiesel distribution facilities with converting to higher ethanol and biodiesel blend friendly status by sharing the costs related to the installation, and/or retrofitting, and/or otherwise upgrading of fuel storage, dispenser/pumps, related equipment, and infrastructure. An eligible project must conform to all applicable Federal, State and local regulatory requirements.

Need and Use of the Information: Pursuant to the authorization by the Commodity Credit Corporation Charter Act of 1948 (Charter Act), (62 Stat. 1070; 15 U.S.C. 714. Charter Act), RBCS will collect information to determine whether participants meet the eligibility requirements to be a recipient of grant funds, project eligibility, conduct the technical evaluation, calculate a priority score, rank and compete the application, as applicable, in order to be considered. Lack of adequate information to make the determination could result in the improper administration and appropriation of Federal grant funds. Applications must be submitted electronically using either the Government-wide *www.grants.gov* website or by the secure-server portal *https://www.rd.usda.gov*. No other form of application will be accepted.

Eligible applicants include owners of transportation fueling, and fuel distribution facilities located in the United States. Eligible entities would include fueling stations, convenience stores, hypermarket fueling stations, fleet facilities, and similar entities with equivalent capital investments, as well as biodiesel terminal operations and heating oil distribution facilities or equivalent entities.

There are two different eligible activities an applicant can apply for grant funds: (1) For Higher Blend Implementation Activities related to Transportation Fueling Facilities and (2) For Higher Blend Implementation Activities related to Fuel Distribution Facilities.

Description of Respondents: Business or other for-profit.

Number of Respondents: 348.

Frequency of Responses: Recordkeeping; Reporting: Other (once).

Total Burden Hours: 13,843.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–23942 Filed 10–29–20; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 27, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by November 30, 2020 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.

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Animal Plant and Health Inspection Service

Title: Export Certification, Accreditation of Non-Government Facilities.

OMB Control Number: 0579–0130.

Summary of Collection: The Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS) is responsible for preventing plant diseases or insect pests from entering the United States, as well as, the spread of pests not widely distributed in the United States, and eradicating those imported when eradication is feasible. The Plant Protection Act (7 U.S.C. 7701 *et seq.*), authorizes the Department to carry out this mission. In addition to its mission, APHIS provides export certification services to ensure other countries that the plants and plant products they are receiving from the United States are free of plant diseases and insect pests.

Need and Use of the Information: The accreditation process requires the use of several information activities to ensure that nongovernment facilities applying for accreditation processes the necessary qualifications. APHIS will collect information for applications submitted by operator/owner of a non-government facility seeking accreditation to conduct laboratory testing or phytosanitary inspection. The application should contain the legal name and full address of the facility, the name, address, telephone and fax numbers of the facility's operator, a description of the facility, and a description of the specific laboratory testing or phytosanitary inspection services for which the facility is seeking accreditation. If these activities are not conducted properly, APHIS export certification program would be compromised, causing a disruption in plant and plant product exports that could prove financially damaging to U.S. exporters.

Description of Respondents: Business or other for profit; State, Local and Tribal Government.

Number of Respondents: 9.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 209.

Animal and Plant Health Inspection Service

Title: South American Cactus Moth; Quarantine and Regulations.

OMB Control Number: 0579–0337.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701—*et seq.*), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of plants and plant pests to prevent the introduction of plant pests into the United States or their dissemination within the United States. The Animal and Plant Health Inspection Service (APHIS) regulations, ''Subpart-South American Cactus Moth'' (7 CFR part 301.55 through 301.55–9), restrict the interstate movement of regulated articles from quarantined areas into or through non-quarantined areas within the United States.

Need and Use of the Information: APHIS will collect information using limited permits, Federal certificates, and compliance agreements. The limited permits are used to authorize movement of regulated articles that are not certifiable to specified destination for processing, treatment, or utilization. Federal certificates are used for domestic movement of treated articles relating to quarantines, and are issued for regulated articles when an inspector or other person authorized to issue certificates finds that the articles have met the conditions of the regulations and may be safely moved interstate without further restrictions. Compliance agreements are provided for the convenience of persons who are involved in the growing, handling, or moving of regulated articles from quarantined areas. Without this information, APHIS could not provide an effective domestic quarantine program to prevent the artificial spread of the South American cactus moth within the United States.

Description of Respondents: Business or other for-profit; and State government officials.

Number of Respondents: 6.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 16.

Animal and Plant Health Inspection Service

Title: Johne's Disease in Domestic Animals.

OMB Control Number: 0579–0338.

Summary of Collection: The Animal Health Protection Act of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The regulations in 9 CFR part 80 pertain specifically to the interstate movement of domestic animals that are positive to an official test for Johne's disease. These regulations provide that cattle, sheep, goats, and other domestic animals that are positive to an official test for Johne's disease may generally be moved interstate only to a recognized slaughtering establishment or to an approved livestock facility for sale to such an establishment. However, they may also be moved for purposes other than slaughter under certain conditions. Moving Johne's-positive livestock interstate for slaughter or for other purposes without increasing the risk of disease spread requires a movement permit or an owner-shipper statement, official ear tags, and a permission to move request. Permission may also be sought, in writing, for movement of animals that do not have a permit, owner-shipper statement, or ear tags.

Need and Use of the Information: Animal and Plant Health Inspection Service (APHIS) will collect information using form VS 1–27, Permit for Movement of Restricted Animals, Official Ear Tags, and Request for Permission to Move. APHIS will collect the following information from formVS–127: (1) The number of animals to be moved; (2) the species of the animals; (3) the points of origin and destination, and (4) the names and addresses of the consignor and the consignee. Failing to collect this information would greatly hinder the control of Johne's disease and possible lead to increased prevalence.

Description of Respondents: Business or other for-profit; Accredited Veterinarians.

Number of Respondents: 6.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 9.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–24105 Filed 10–29–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 26, 2020.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology Comments regarding these information collections are best assured of having their full effect if received by November 30, 2020. 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

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Agricultural Marketing Service

Title: Child Nutrition Labeling Program.

OMB Control Number: 0581–0261.

Summary of Collection: The Child Nutrition Labeling Program is a voluntary technical assistance program administered by the Agricultural Marketing Service (AMS). The program is designed to aid schools and institutions participating in the National School Lunch Program, the School

Breakfast Program, the Child and Adult Care Food Program, and the Summer Food Service Program by, determining the contribution a commercial product makes towards the meal pattern requirements. Legislative authority for the programs is covered under The National School Lunch Act (NSLA); Public Law 90–302 enacted in 1968 amended the NSLA establishing the Special Food Service Program for Children. In 1975 Congress separated the Child Care Food Program and Summer Food Service components of the SFAPFC and provided each with legislative authorization.

The Child Nutrition Labeling Program is implemented in conjunction with existing label approval programs administered by the Food Safety and Inspection Service (FSIS), and the U.S. Department of Commerce (DoC). To participate in the CN Labeling Program, industry submits labels to AMS of products that are in conformance with the FSIS label approval program (for meat and poultry), and the DoC label approval program (for seafood products).

Need and Use of the Information: AMS uses the information collected to aid school food authorities and other institutions participating in child nutrition programs in determining the contribution a commercial product makes towards the established meal pattern requirements. AMS uses all of the collected information to give the submitted label an approval status that indicates if the label can be used as part of the CN Labeling Program. Without the information CN Labeling Program would have no basis on which to determine how or if a product meets the meal pattern requirements.

Description of Respondents: Business or other for-profit.

Number of Respondents: 262.

Frequency of Responses: Reporting: Other (as needed).

Total Burden Hours: 262.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–23941 Filed 10–29–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 26, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by November 30, 2020 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Significant Cave Nomination.

OMB Control Number: 0596–0244.

Summary of Collection: The Federal Cave Resources Protection Act (FCRPA) [Pub. L. 100–691, 107 Stat. 4546] requires the Secretaries of Agriculture and Interior to identify and protect significant caves on Federal lands within their respective jurisdictions. The information covered in this collection applies to caves on Federal lands administered by the Forest Service. The FCRPA does not define what constitutes a ''significant'' cave, but it does require the Secretaries, in cooperation and consultation with each other, to issue regulations that define criteria for identification of significant caves found at (16 U.S.C. 4303(a)).

Need and Use of the Information: In accordance with FCRPA, the FS collects information from appropriate private sector interests, including ''cavers,'' to update a list of significant caves under USDA's jurisdiction. FS will use form FS–2800–0023 ''Significant Cave Nomination Worksheet'' to collect name, address, telephone number of individual or organization submitting the nomination and the individual who is knowledgeable about the resources in the cave; name and location of the cave, a discussion of how the cave meets the criteria, studies, maps, research papers and other supporting documentation. If this information is not collected FS might not become aware of potentially significant caves' existence or have insufficient information upon which to base a judgment as to their significance.

Description of Respondents: Individuals and households.

Number of Respondents: 10.

Frequency of Responses: Reporting: One time.

Total Burden Hours: 110.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–23946 Filed 10–29–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 26, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) 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; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by November 30, 2020 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.

Office of the Assistant Secretary for Civil Rights

Title: USDA Race, Ethnicity and Gender Data Collection.

OMB Control Number: 0503–0019.

Summary of Collection: Section 14006 and 14007 of the Food, Conservation, and Energy Act of 2008, 7 U.S.C. 8701 (referred to as the 2008 Farm Bill) establishes a requirement for the Department of Agriculture (USDA) to annually compile application and participation rate data regarding socially disadvantaged farmers or ranchers by computing for each program of the USDA that serves agriculture producers and landowners (a) raw numbers of applicants and participants by race, ethnicity, and gender, subject to appropriate privacy protection, as determined by the Secretary; and (b) the application and participation rate, by race, ethnicity and gender as a percentage of the total participation rate of all agricultural producers and landowners for each county and State in the United States.

Need and Use of the Information: Data will be collected on a voluntary basis through a questionnaire to determine the race, ethnicity and gender of farmers and ranchers who apply for and who participate in USDA programs and services. The data will enable the Secretary and the Office of the Assistant Secretary for Civil Rights and the agencies' outreach offices in reaching current and prospective socially disadvantaged farmers or ranchers in a linguistically appropriate manner to focus resources in a particular county or region where low participation is indicated by the data to improve the participation of those farmers and ranchers in USDA programs. The data is intended to be used as one indicator in targeting and designing outreach activities and in assessing compliance with civil rights laws in program delivery. The data may also be used as an indicator in directing compliance reviews to geographic areas where there are indications of low participation in USDA programs by minorities and women, thus serving as an ''early warning system'' that warrants further investigations. Failure to collect this information will have a negative impact on USDA's outreach activities and could result in an inability of the agencies to equitably deliver programs and services to applicant and producers.

Description of Respondents: Individuals or households.

Number of Respondents: 1,913,798.

Frequency of Responses: Reporting: Other (once).

Total Burden Hours: 63,793.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–23945 Filed 10–29–20; 8:45 am]

BILLING CODE 3410–9R–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 26, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by November 30, 2020 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Non-Timber Forest Products Generic for Surveys, Interviews, and Focus Groups.

OMB Control Number: 0596–243.

Summary of Collection: Many laws and policies specifically direct the USDA Forest Service (FS) to consider and manage for non-timber forest products for the benefit of the American public and to meet trust responsibilities to American Indians and Alaskan Natives on federal and tribal lands. Primary authorities to collect information include the Multiple-Use Sustained-Yield Act of 1960 that requires the FS to manage national forests ''under principles of multiple use and to produce a sustained yield of products and services.'' The Forest and Rangeland Renewable Resources Planning Act of 1974 requires the Secretary of Agriculture to ''maintain a comprehensive inventory of renewable resources and evaluate opportunities to improve their yield of goods and services. The 2012 Planning Rule specifically requires ''consideration of habitat conditions for wildlife, fish, and plants commonly enjoyed and used by the public for hunting, fishing, trapping, gathering, observing, and subsistence'' on national forests.

Need and Use of the Information: Surveys, interviews, and focus groups administered under this generic collection will be designed to collect information from individuals and groups who forage for non-timber forest products and from natural resource professionals who manage land where non-timber forest products foraging takes place. Non-timber forest products harvested for use as food, medicine, and other purposes are plants, mushrooms, and plant- or tree-derived goods like nuts, boughs, sap, and leaves. The FS and other land management agencies will not have a scientific basis for managing non-timber forest product resources and the lands that support them without this information. Also, FS will not have the necessary information to provide technical advice on this issue to other land management agencies and individuals.

Description of Respondents: Individuals or households; Non-profit organizations and State, Local and Tribal government.

Number of Respondents: 14,250.

Frequency of Responses: Reporting: One time.

Total Burden Hours: 5,613.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–23944 Filed 10–29–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2020–0036]

Notice of Availability of an Environmental Assessment for Release of Ramularia Crupinae for Biological Control of Common Crupina (Crupina vulgaris) in the Contiguous United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment relative to permitting the release of *Ramularia crupinae* for the biological control of common crupina (*Crupina vulgaris*) in the contiguous United States. Based on the environmental assessment and other relevant data, we have reached a preliminary determination that the release of this control agent within the contiguous United States will not have a significant impact on the quality of the human environment. We are making the environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before November 30, 2020.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0036.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2020–0036, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0036* or in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Colin D. Stewart, Assistant Director, Pests, Pathogens, and Biocontrol Permits, Permitting and Compliance Coordination, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 851–2327; email: *Colin.Stewart@usda.gov.*

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) is proposing to issue permits for the release of *Ramularia crupinae* into the contiguous United States for the biological control of common crupina (*Crupina vulgaris*).

Common crupina, a winter annual, is spreading in pastures and rangelands resulting in a reduction in quality of forage as it displaces other species in the northwestern United States; it is a native of Eurasia, most likely originating in the Middle East. Common crupina may grow from 0.3 to 1.0 meter in height, having inconspicuous flowers ranging from lavender to purple, as well as rosettes that develop through the fall and winter.

Ramularia crupinae, a leaf-spotting fungus, was chosen as a potential biological control agent of *C. vulgaris* in the contiguous United States over other management options because it is host-specific.

APHIS' review and analysis of the potential environmental impacts associated with the proposed release are documented in detail in an environmental assessment (EA) entitled ''Field Release of the Plant Fungus *Ramularia crupinae* (Deuteromycotina) for Classical Biological Control of Common Crupina, *Crupina vulgaris* (Asteraceae), in the Contiguous United States'' (March 2020). We are making the EA available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading DATES at the beginning of this notice.

The EA may be viewed on the *Regulations.gov* website or in our reading room (see **ADDRESSES** above for a link to *Regulations.gov* and information on the location and hours of the reading room). You may also request paper copies of the EA by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the EA when requesting copies.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 21st day of October 2020.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–24125 Filed 10–29–20; 8:45 am]

BILLING CODE 3410–34–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Utah Advisory Committee

AGENCY: U.S. 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 a teleconference meeting of the Utah Advisory Committee (Committee) to the Commission will be held at 12:00 p.m. Mountain Time on Friday, December 11, 2020. The purpose of the meeting will be for the Committee to review their op-ed on the gender wage gap.

DATES: The meeting will be held on Friday, December 11, 2020 at 12:00 p.m. MT.

Public Call Information: Dial: 800–367–2403, Conference ID: 6978962.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes, Designated Federal Officer (DFO) at *afortes@usccr.gov* or by phone at (202) 681–0857.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–367–2403, conference ID number: 6978962. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

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 mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012 or email Ana Victoria Fortes at *afortes@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzltAAA*

Please click on the ''Committee Meetings'' tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda:

I. Welcome
II. Review Op-Ed
III. Public Comment
VI. Vote
V. Media Outreach
VI. Adjournment

Dated: October 27, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–24109 Filed 10–29–20; 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; Survey of Income and Program Participation

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

Agency: U.S. Census Bureau.

Title: Survey of Income and Program Participation.

OMB Control Number: 0607–1000.

Form Number(s): None.

Type of Request: Revision of a currently approved collection.

Number of Respondents: 70,560.

Average Hours per Response: 63 minutes.

Burden Hours: 74,088.

Needs and Uses: The 2018 SIPP collects information about a variety of topics including

demographics, household composition, education, nativity and citizenship, health insurance coverage, Medicaid, Medicare, employment and earnings, unemployment insurance, assets, child support, disability, housing subsidies, migration, Old-Age Survivors and Disability Insurance (OASDI), poverty, and participation in various government programs like Supplemental Nutrition Assistance Program (SNAP), Supplemental Security Income (SSI), and Temporary Assistance for Needy Families (TANF). The SIPP sample is nationally representative, with an oversample of low-income areas, in order to increase the ability to measure participation in government programs.

The SIPP program provides critical information necessary to understand patterns and relationships in income and program participation. It will fulfill its objectives to keep respondent burden and costs low, maintain high data quality and timeliness, and use a refined and vetted instrument and processing system. The SIPP data collection instrument maintains the improved data collection experience for respondents and interviewers, and focuses on improvements in data quality and better topic integration.

Starting in 2019, the Census Bureau and the Social Security Administration (SSA) entered into a joint agreement where both agencies support the SIPP program by contributing resources to add, process, review, and maintain additional content on marital history, parental mortality, retirement and pension, and disability. This joint agreement started in September 2019 and goes until September 30, 2023.

The SIPP instrument is currently written in Blaise and C#. It incorporates an Event History Calendar (EHC) design to help ensure that the SIPP will collect intra-year dynamics of income, program participation, and other activities with at least the same data quality as earlier panels. The EHC is intended to help respondents recall information in a more natural ''autobiographical'' manner by using life events as triggers to recall other economic events. For example, a residence change may often occur contemporaneously with a change in employment. The entire process of compiling the calendar focuses, by its nature, on consistency and sequential order of events, and attempts to correct for otherwise missing data.

Since the SIPP EHC collects information using this ''autobiographical'' manner for the prior year, due to the coronavirus pandemic, select questions were modified to include answer options related to the pandemic as well as adding new questions pertaining to the pandemic. For instance, we adjusted the question regarding being away from work part-time to include being possibly furloughed due to coronavirus pandemic business closures. We also added new questions to collect information on whether the respondent receive any stimulus payments.

Information quality, as described by the Census Bureau's Information Quality Guidelines, is an integral part of the pre-dissemination review of information released by the Census Bureau. Information quality is essential to data collections conducted by the Census Bureau and is incorporated into the clearance process required by the Paperwork Reduction Act.

Affected Public: Individuals or Households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Sections 141, 182.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view 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 0607–1000.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–24058 Filed 10–29–20; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Transportation and Related Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on November 18, 2020, at 11:30 a.m., Eastern Standard Time, via teleconference. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

Agenda:

Public Session

1. Welcome and Introductions.

2. Status reports by working group chairs.

3. Public comments and Proposals.

Closed Session

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than November 11, 2020.

To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on August 17, 2020, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § (10)(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482·2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2020–24025 Filed 10–29–20; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Membership of the International Trade Administration Performance Review Board

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Membership on the International Trade Administration's Performance Review Board.

SUMMARY: The International Trade Administration (ITA), Department of Commerce (DOC), announces the appointment of those individuals who have been selected to serve as members of ITA's Performance Review Board. The Performance Review Board is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for ITA's Performance Review Board begins on October 30, 2020.

FOR FURTHER INFORMATION CONTACT: Joan Nagielski, U.S. Department of Commerce, Office of Human Resources Management, Department of Commerce Human Capital Client Services, Office of Employment and Compensation, 14th and Constitution Avenue NW, Room 50013, Washington, DC 20230, at (202) 482–6342.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the International Trade Administration (ITA), Department of Commerce (DOC), announces the appointment of those individuals who have been selected to serve as members of the ITA Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and ratings of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other Performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES. The Appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months. The name, position title, and type of appointment of each member of the Performance Review Board are set forth below:

1. Scott Tatlock, Executive Director, Office of China, ITA Career SES
2. Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, ITA, Career SES
3. Anne Driscoll, Deputy Assistant Secretary for Industry and Analysis, ITA Career SES
4. Praveen Dixit, Deputy Assistant Secretary for Trade Policy and Analysis, ITA, Career SES
5. Rona Bunn, Chief Information Officer, Career SES
6. Kurt Bersani, Chief Financial Officer, Enterprise Services, Career SES
7. Jose Cunningham, Director, Advocacy Center, ITA, Non-Career SES
8. Catrina Purvis, Chief Privacy Officer and Director of Open Government, DOC, Career SES
9. Carole Showers, Executive Director for Anti-Dumping & Subsidies Policy and Negotiation, ITA, Career SES
10. Ian Saunders, DAS for Western Hemisphere, ITA, Career SES
11. Lawson Kluttz, Chief of Staff for ITA, Non-Career SES

Dated: October 26, 2020.

Joan Nagielski,

Human Resources Specialist, Office of Employment and Compensation, Department of Commerce Human Capital Client Services, Office of Human Resources Management, Office of the Secretary, Department of Commerce.

[FR Doc. 2020–24044 Filed 10–29–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) has received requests to conduct administrative reviews of various antidumping duty (AD) and countervailing duty (CVD) orders and findings with September anniversary dates. In accordance with Commerce's regulations, we are initiating those administrative reviews.

DATES: Applicable October 30, 2020.

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.

SUPPLEMENTARY INFORMATION:

Background

Commerce has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various AD and CVD orders and findings with September anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (POR), it must notify Commerce within 30 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *https://access.trade.gov* in accordance with 19 CFR 351.303.[1] Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on Commerce's service list.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR. We intend to place the CBP data on the record within five days of publication of the initiation notice and to make our decision regarding respondent selection within 30 days of publication of the initiation **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted within seven days after the placement of the CBP data on the record of this review. Parties wishing to submit rebuttal comments should submit those comments within five days after the deadline for the initial comments.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act, the following guidelines regarding collapsing of companies for purposes of respondent selection will apply. In general, Commerce has found that determinations concerning whether particular companies should be ''collapsed'' (*e.g.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this AD proceeding (*e.g.,* investigation, administrative review, new shipper review, or changed circumstances review). For any company subject to this review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value (Q&V) Questionnaire for purposes of respondent selection, in general, each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where Commerce considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of a particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[2] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial responses to section D of the questionnaire.

Separate Rates

In proceedings involving non-market economy (NME) countries, Commerce begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is Commerce's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, Commerce analyzes each entity

[1] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[2] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

exporting the subject merchandise. In accordance with the separate rates criteria, Commerce assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, Commerce requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on Commerce's website at *https://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [3] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[4] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Application will be available on Commerce's website at *https://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Application, refer to the instructions contained in the application. Separate Rate Applications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a Separate Rate Application or Certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following AD and CVD orders and findings. We intend to issue the final results of these reviews not later than September 30, 2021.

	Period to be reviewed
AD Proceedings	
BRAZIL: Certain Cold-Rolled Steel Flat Products, A–351–843	9/1/19–8/31/20
Aperam Inox America do Sul S.A.	
ArcelorMittal Brasil S.A.	
Armco do Brasil S.A.	
Arvedi Metalfer do Brasil	
Companhia Siderurgica Nacional	
NVent do Brasil Eletrometalurgica	
Signode Brasileira Ltda.	
Usinas Siderurgicas de Minas Gerais (Usiminas)	
Villares Metals S.A.	
Waelzholz Brasmetal Laminacao Ltda.	
BRAZIL: Emulsion Styrene-Butadiene Rubber, A–351–849	9/1/19–8/31/20
Arlanxeo Brasil S.A.	
INDIA: Certain Lined Paper Products, A–533–843	9/1/19–8/31/20
Cellpage Ventures Private Limited	
Dinakar Process Private Limited	
Goldenpalm Manufacturers PVT Limited	
ITC Limited—Education and Stationery Products Business	
JC Stationery (P) Ltd	
Kokuyo Riddhi Paper Products Private Limited	
Lodha Offset Limited	
Lotus Global Private Limited	
M/s.Bhaskar Paper Products	
Magic International Pvt. Ltd.	
Marisa International	
Navneet Education Ltd.	
Pioneer Stationery Private Limited (aka Pioneer Stationery Pvt. Ltd.)	
PP Bafna Ventures Private Limited	
SAB International	
SGM Paper Products	
Super Impex of India	

[3] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[4] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
INDIA: Oil Country Tubular Goods, A–533–857	9/1/19–8/31/20
Jindal SAW Limited	
GVN Fuels Limited [5]	
Maharashtra Seamless Limited	
Jindal Pipe Limited	
MEXICO: Emulsion Styrene-Butadiene Rubber, A–201–848	9/1/19–8/31/20
Industrias Negromex, S.A. de C.V.—Planta Altamira [6]	
MEXICO: Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes, A–201–847.	
Maquilacero S.A. de C.V.880	
Arco Metal S.A. de C.V.	
Forza Steel S.A. de C.V.	
Industrias Monterrey, S.A. de C.V.	
Perfiles y Herrajes LM S.A. de C.V.	
Productos Laminados de Monterrey S.A. de C.V.	
PYTCO S.A. de C.V.	
Regiomontana de Perfiles y Tubos S.A. de C.V.	
Ternium S.A. de C.V.	
Tuberia Nacional, S.A. de C.V.	
Tuberias Procarsa S.A. de C.V.	
REPUBLIC OF KOREA: Certain Cold-Rolled Steel Flat Products, A–580–881	9/1/19–8/31/20
AJU Steel Co., Ltd.	
Ameri-Source Korea	
Dai Yang Metal Co., Ltd.	
DCM Corporation	
DK GNS Co., Ltd.	
Dongbu Incheon Steel Co., Ltd	
Dongbu Steel Co., Ltd.	
Dongkuk Industries Co., Ltd.	
Dongkuk Steel Mill Co., Ltd.	
GS Global Corporation	
Hanawell Co., Ltd.	
Hankum Co., Ltd.	
Hwashin Co. Ltd.	
Hyosung TNC Corporation	
Hyundai Corporation	
Hyundai Steel Company	
JMP Co., Ltd.	
KG Dongbu Steel Co., Ltd.	
Korinox Co., Ltd.	
Mikwang Precision Manufacture Co., Ltd.	
Okaya Korea Co., Ltd.	
POSCO	
POSCO Coated and Color Steel Co., Ltd.	
POSCO Daewoo Corporation	
POSCO International Corporation	
Samhwan Steel Co., Ltd.	
Samsung C & T Corporation	
Samsung Electronics Co., Ltd.	
Samsung STS Co., Ltd.	
SeAH Changwon Integrated Special Steel Corporation	
SeAH Coated Metal Corporation	
SeAH Steel Corporation	
Shin Steel Co., Ltd.	
Shin Young Co., Ltd.	
Signode Korea Inc.	
SK Networks Co., Ltd.	
Soon Hong Trading Co., Ltd.	
Sungjin Co., Ltd.	
Taesan Corporation	
TCC Steel Corporation	
TI Automotive Ltd.	
Wolverine Korea Co., Ltd.	
REPUBLIC OF KOREA: Heavy Walled Rectangular Welded Carbon Pipes and Tubes, A–580–880	9/1/19–8/31/20
Ahshin Pipe & Tube Company	
Aju Besteel Co., Ltd.	
B N International Co., Ltd.	
Bookook Steel Co., Ltd.	
Dong-A Steel Company	
Dongbu Steel Co., Ltd.	
G.S. ACE Industry Co., Ltd.	
Ganungol Industries Co. Ltd.	
HAEM Co., Ltd.	
Hanjin Steel Pipe	
HBL INC.	

	Period to be reviewed
HiSteel Co., Ltd.	
Husteel Co., Ltd.	
Hyosung Corporation	
Hyundai Steel Co.	
Hyundai Steel Pipe Company	
K Steel Co. Ltd.	
Korea Hinge Tech	
Kukje Steel Co., Ltd.	
Main Steel Co.	
Miju Steel Manufacturing Co., Ltd.	
NEXTEEL Co., Ltd.	
POSCO DAE WOO	
Sam Kang Industrial Co., Ltd.	
Samson Controls Ltd., Co.	
SeAH Steel Corporation	
Shin Steel Co., Ltd.	
Tianjin Songda International Trade Co., Ltd.	
Yujin Steel Industry Co. Ltd.	
REPUBLIC OF KOREA: Oil Country Tubular Goods, A–580–870	9/1/19–8/31/20
AJU Besteel Co., Ltd.	
DB Inc.	
Dong-A Steel Co., Ltd.	
FM Oilfield Services Solutions LLC	
Hengyang Steel Tube Group International Trading Inc.	
HiSteel Co., Ltd.	
Husteel Co., Ltd.	
Hyundai Corporation	
Hyundai Heavy Industries Co., Ltd.	
Hyundai Steel Company	
ILJIN Steel Corporation	
K Steel Corporation	
KASCO	
Kenwoo Metals Co., Ltd.	
Kukje Steel Co., Ltd.	
Kumkang Kind Co., Ltd.	
Kumsoo Connecting Co., Ltd.	
Master Steel Corporation	
NEXTEEL Co., Ltd.	
POSCO International Corporation	
Pusan Coupling Corporation	
Pusan Fitting Corporation	
Sang Shin Industrial Co., Ltd. (a.k.a. SIC Tube Co., Ltd.)	
SeAH Changwon Integrated Special Steel Co., Ltd.	
SeAH Steel Corporation	
Shin Steel Co., Ltd.	
Sichuan Y&J Industries Co. Ltd.	
Steel-A Co., Ltd.	
Sungwon Steel Co., Ltd.	
TGS Pipe Co., Ltd.	
TJ Glovsteel Co., Ltd.	
TPC Co., Ltd.	
T-Tube Co., Ltd.	
SOCIALIST REPUBLIC OF VIETNAM: Oil Country Tubular Goods, A–552–817.	
Pusan Pipe America	
SeAH Steel VINA Corporation	
TAIWAN: Forged Steel Fittings, A–583–863	9/1/19–8/31/20
Both-Well Steel Fittings, Co., Ltd.	
TAIWAN: Narrow Woven Ribbons With Woven Selvedge, A–583–844	9/1/19–8/31/20
Maple Ribbon Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Steel Wheels 12 to 16.5 Inches in Diameter, A–570–090	4/22/19–8/31/20
Hangzhou Antego Industry Co. Ltd	
Shanghai Yata Industry Co., Ltd.	
Xiamen Topu Imports & Export Co., Ltd.	
Xingmin Intelligent Transportation Systems (Group) Co., Ltd	
Zhejiang Jingu Company Limited	
THE PEOPLE'S REPUBLIC OF CHINA: Steel Racks, A–570–088	3/4/19–8/31/20
Ateel Display Industries (Xiamen) Co., Ltd	
Changzhou Tianyue Storage Equipment Co., Ltd	
CTC Universal (Zhangzhou) Industrial Co., Ltd	
David Metal Craft Manufactory Ltd	
Fujian Ever Glory Fixtures Co., Ltd	
Fujian First Industry and Trade Co., Ltd	
Guangdong Wireking Housewares and Hardware Co., Ltd	
Hebei Minmetals Co., Ltd	

	Period to be reviewed
Huanghua Hualing Garden Products Co., Ltd	
Huanghua Hualing Hardware Products Co., Ltd	
Huanghua Xingyu Hardware Products Co., Ltd	
Huanghua Xinxing Furniture Co., Ltd	
Huangua Haixin Hardware Products Co., Ltd	
Huangua Qingxin Hardware Products Co., Ltd	
i-Lift Equipment Ltd	
Jiangsu Baigeng Logistics Equipments Co., Ltd	
Jiangsu Kingmore Storage Equipment Manufacturing Co., Ltd	
Jiangsu Nova Intelligent Logistics Equipment Co., Ltd	
Johnson (Suzhou) Metal Products Co., Ltd	
Master Trust (Xiamen) Import and Export Co., Ltd	
Nanjing Dongsheng Shelf Manufacturing Co., Ltd	
Nanjing Ironstone Storage Equipment Co., Ltd	
Nanjing Kingmore Logistics Equipment Manufacturing Co., Ltd	
Ningbo Beilun Songyi Warehouse Equipment Manufacturing Co., Ltd	
Ningbo Xinguang Rack Co., Ltd	
Qingdao Rockstone Logistics Appliance Co., Ltd	
Redman Corporation	
Redman Import & Export Limited	
Suzhou (China) Sunshine Hardware & Equipment Imp. & Exp. Co., Ltd	
Tianjin Master Logistics Equipment Co., Ltd	
Waken Display System Co., Ltd	
Xiamen Baihuide Manufacturing Co., Ltd	
Xiamen Ever Glory Fixtures Co., Ltd	
Xiamen Golden Trust Industry & Trade Co., Ltd	
Xiamen Huiyi Beauty Furniture Co., Ltd	
Xiamen Kingfull Imp and Exp Co., Ltd. (d.b.a) Xiamen Kingfull Displays Co., Ltd	
Xiamen LianHong Industry and Trade Co., Ltd	
Xiamen Luckyroc Industry Co., Ltd	
Xiamen Luckyroc Storage Equipment Manufacture Co., Ltd	
Xiamen Meitoushan Metal Products Co., Ltd	
Xiamen Power Metal Display Co., Ltd	
Xiamen XinHuiYuan Industrial & Trade Co., Ltd	
Xiamen Yiree Display Fixtures Co., Ltd	
Yuanda Storage Equipment Ltd	
Zhangjiagang Better Display Co., Ltd	
Zhangzhou Hongcheng Hardware & Plastic Industry Co., Ltd	
TURKEY: Oil Country Tubular Goods, A–489–816	9/1/19–8/31/20
APL Apollo Tubes Ltd.	
BAUER Casings Makina San. ve Tic. Ltd.	
Binayak Hi Tech Engineering Ltd.	
Göktaş Yassi Hadde Mamülleri San. ve Tic. A.Ş.	
ISMT Limited	
Noksel Çelik Boru Sanayi. A.Ş.	
TPAO (Türkiye Petrolleri Anonim Ortaklığı)	
UNITED KINGDOM: Certain Cold-Rolled Steel Flat Products, A–412–824	9/1/19–8/31/20
Liberty Performance Steels, Ltd.	
CVD Proceedings	
BRAZIL: Cold-Rolled Steel Flat Products, C–351–844	1/1/19–12/31/19
Aperam Inox America do Sul S.A.	
ArcelorMittal Brasil S.A.	
Armco do Brasil S.A.	
Arvedi Metalfer do Brasil	
Companhia Siderurgica Nacional	
NVent do Brasil Eletrometalurgica	
Signode Brasileira Ltda.	
Usinas Siderurgicas de Minas Gerais (Usiminas)	
Villares Metals S.A.	
Waelzholz Brasmetal Laminacao Ltda.	
INDIA: Lined Paper Products, C–533–844	1/1/19–12/31/19
Dinakar Process Private Limited	
ITC Limited—Education and Stationery Products Business	
JC Stationery (P) Ltd	
M/s.Bhaskar Paper Products	
PP Bafna Ventures Private Limited	
INDIA: Oil Country Tubular Goods, C–533–858	1/1/19–12/31/19
Alisped India Pvt., Ltd.	
Anand Tubes Pvt., Ltd.	
APL Apollo Tubes Ltd.	
Apollo Metalex Pvt., Ltd.	
AV Engineering Inc.	
Bhushan Steel Limited	
Disha Auto Components Pvt., Ltd.	

	Period to be reviewed
Dover India Pvt., Ltd.	
Energy Oilfield Tools Pvt., Ltd.	
Freight Systems (India) Pvt., Ltd.	
Gandhi Special Tubes Limited	
Garg Tube Export LLP	
Global Seamless Tubes And Pipes Pvt., Ltd.	
Global Steelage	
Global Tube & Steel Solutions Pvt., Ltd.	
Goodluck India Limited	
GVN Fuels Limited	
Heavy Metal & Tubes India Pvt., Ltd.	
Hyundai Steel India Pvt., Ltd.	
Hyundai Steel Pipe India Pvt., Ltd.	
ISMT Europe AB	
ISMT Limited	
Jindal (India) Limited	
Jindal Pipes Limited	
Jindal Saw Ltd.	
JSW Steel Pvt., Ltd.	
Khanna Industrial Pipes Pvt., Ltd.	
Kirtanlal Steel Pvt., Ltd.	
Lal Baba Seamless Tubes Pvt., Ltd.	
Maharashtra Seamless Limited	
Mehta Tubes Limited	
Metamorphosis Engitech India Pvt., Ltd.	
NF Forgings Pvt., Ltd.	
Penguin Petroleum Services Pvt., Ltd.	
Pennar Industries Limited	
PT. CT Advance Technology	
Rakshita Overseas	
Shanker Steels	
Superior Steel Overseas	
Tata Steel BSL Limited	
Tube Investments of India Ltd.	
Vulcan Industrial Engg Co., Pvt., Ltd.	
Welspun Corp., Ltd.	
Zenith Birla Steels Pvt., Ltd.	
Zenith Dyeintermediates Ltd.	
REPUBLIC OF KOREA: Certain Cold-Rolled Steel Flat Products, C–580–882	1/1/19–12/31/19
AJU Steel Co., Ltd.	
Amerisource Korea	
Atlas Shipping Cp. Ltd.	
BC Trade	
Busung Steel Co., Ltd.	
Cenit Co., Ltd.	
Daewoo Logistics Corp.	
Dai Yang Metal Co., Ltd.	
DK GNS Co., Ltd	
Dongbu Incheon Steel Co., Ltd.	
Dongbu Steel Co., Ltd.	
KG Dongbu Steel Co., Ltd. (formerly Dongbu Steel Co., Ltd.)	
Dongbu USA	
Dong Jin Machinery	
Dongkuk Industries Co., Ltd.	
Dongkuk Steel Mill Co., Ltd.	
Eunsan Shipping and Air Cargo Co., Ltd.	
Euro Line Global Co., Ltd.	
GS Global Corp.	
Hanawell Co., Ltd.	
Hankum Co., Ltd.	
Hyosung TNC Corp.	
Hyuk San Profile Co., Ltd.	
Hyundai Group	
Hyundai Steel Company	
Iljin NTS Co., Ltd.	
Iljin Steel Corp.	
Jeen Pung Industrial Co., Ltd.	
JT Solution	
Kolon Global Corporation	
Nauri Logistics Co., Ltd.	
Okaya (Korea) Co., Ltd.	
PL Special Steel Co., Ltd.	
POSCO	
POSCO C&C Co., Ltd.	

	Period to be reviewed
POSCO Daewoo Corp.	
POSCO International Corp.	
Samsung C&T Corp.	
Samsung STS Co., Ltd.	
SeAH Steel Corp.	
SM Automotive Ltd.	
SK Networks Co., Ltd.	
Taihan Electric Wire Co., Ltd.	
TGS Pipe Co., Ltd.	
TI Automotive Ltd.	
Xeno Energy	
Young Steel Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Steel Wheels 12 to 16.5 Inches in Diameter, C–570–091	2/25/19–12/31/19
Hangzhou Antego Industry Co. Ltd.	
Shanghai Yata Industry Co., Ltd.	
Xiamen Topu Imports & Export Co., Ltd.	
Xingmin Intelligent Transportation Systems (Group) Co., Ltd.	
Zhejiang Jingu Company Limited	
THE PEOPLE'S REPUBLIC OF CHINA: Steel Racks, C–570–089	12/3/18–12/31/19
Nanjing Dongsheng Shelf Manufacturing Co., Ltd	
TURKEY: Heavy Walled Rectangular Welded Carbon Steel Pipes and Tube, C–489–825	1/1/19–12/31/19
Agir Haddecilik A.S.	
Cag Celik Demir ve Celik Endustri A.S.	
Cinar Boru Profil San Ve Tic. A.S.	
Mescier Dis Ticaret Ltd. Sti.	
MTS Lojistik ve Tasimacilik Hizmetleri TIC A.S. Istanbul	
Noksel Celik Boru Sanayi A	
Ozdemir Boru Profil San. ve Tic. Ltd. Sti.	
SEBA Dis Ticaret A.S.	
Tosyali Toyo Celik A.S.	
TURKEY: Oil Country Tubular Goods, C–489–817	1/1/19–12/31/19
APL Apollo Tubes Ltd.	
Bauer Casings Makina San. ve Tic. Ltd.	
Binayak Hi Tech Engineering Ltd.	
Borusan Mannesmann Boru Sanayi ve Ticaret A.Ş.	
Borusan Mannesmann Boru Yatirim Holding	
Borusan Istikbal Ticaret	
Göktaş Yassi Hadde Mamülleri San. ve Tic. A.Ş.	
ISMT Limited	
Noksel Çelik Boru Sanayi. A.Ş.	
TPAO (Türkiye Petrolleri Anonim Ortaklıgı)	
Suspension Agreements	
MEXICO: Fresh Tomatoes, A–201–820	9/1/19–8/31/20

Duty Absorption Reviews

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an AD order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), Commerce, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether AD duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Gap Period Liquidation

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant ''gap'' period of the order (*i.e.,* the period following the expiry of provisional measures and before definitive measures were put into place), if such a gap period is applicable to the POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to administrative reviews included in this notice of initiation.

[5] Commerce collectively treats GVN Fuels Limited, Maharashtra Seamless Limited, and Jindal Pipe Limited as the ''GVN Single Entity,'' and merchandise that is both produced and exported by the companies within the GVN Single Entity are excluded from the antidumping duty order. *See Certain Oil Country Tubular Goods from India: Notice of Correction to Amended Final Determination and Amendment of Antidumping Duty Order,* 82 FR 35182 (July 28, 2017) (*OCTG from India AD Order*). However, this exclusion does not apply to merchandise produced by a company within the GVN Single Entity that is exported by any other company outside of the GVN Single Entity, or to merchandise that is produced by any other company and is exported by a company within the GVN Single Entity. Resellers of merchandise that is produced by companies within the GVN Single Entity are also not entitled to this exclusion. *See OCTG from India AD Order.*

[6] We also received review requests for ''Industrias Negromex S.A. de C.V.,'' ''Negromex S.A. de C.V.'' and ''Industrias Negromex Planta Altamira.'' We confirmed that these company name variations all reference the single exporter identified above.

Additionally, the review requests and supporting documentation indicated that two companies listed in the requests were U.S. importers: Dynasol LLC and INSA, LLC.

Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Factual Information Requirements

Commerce's regulations identify five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). These regulations require any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The regulations, at 19 CFR 351.301, also provide specific time limits for such factual submissions based on the type of factual information being submitted. Please review the *Final Rule,*[7] available at *https://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in this segment. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[8]

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information using the formats provided at the end of the *Final Rule.*[9] Commerce intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable certification requirements.

Extension of Time Limits Regulation

Parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by Commerce.[10] In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning CBP data; and (5) Q&V questionnaires. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This policy also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which Commerce will grant untimely-filed requests for the extension of time limits. Please review the *Final Rule,* available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: October 26, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–24051 Filed 10–29–20; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[8] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 41363 (July 10, 2020).

[9] *See* section 782(b) of the Act; *see also Final Rule;* and the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[10] *See* 19 CFR 351.302.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–130]

Certain Walk-Behind Lawn Mowers and Parts Thereof From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain walk-behind lawn mowers and parts thereof (lawn mowers), from the People's Republic of China (China). The period of investigation is January 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable October 30, 2020.

FOR FURTHER INFORMATION CONTACT: Moses Song or Tyler Weinhold, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7885 or (202) 482–1121, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on June 22, 2020.[1] On August 3, 2020, Commerce postponed the preliminary determination of this investigation to October 23, 2020.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics

[1] *See Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 85 FR 37426 (June 22, 2020) (*Initiation Notice*).

[2] *See Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation,* 85 FR 46587 (August 3, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination of the Countervailing Duty Investigation of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are lawn mowers from China. For a complete description of the scope of this investigation, *see* Appendix I.

At the time of the filing of the petition, there were ongoing antidumping (AD) and countervailing duty (CVD) investigations on certain vertical shaft engines between 99cc and up to 225cc, and parts thereof (small vertical engines), from China.[4] The scope of the small vertical engines from China investigations covers engines ''whether mounted or unmounted, primarily for walk-behind lawn mowers. Engines meeting this physical description may also be for other non-handheld outdoor power equipment, including but not limited to, pressure washers.'' The small vertical engines scope also provides that ''if a subject engine is imported mounted on such equipment, only the engine is covered by the scope. Subject merchandise includes certain small vertical shaft engines produced in the subject country whether mounted on outdoor power equipment in the subject country or in a third country.'' [5] This creates an overlap between the scopes of these proceedings.

Therefore, for the purpose of Customs and Border Protection (CBP)'s administration, where the engine of a lawn mower is also covered by the scope of the small vertical engines from China CVD proceeding, parties are instructed to enter their merchandise under the CVD case number associated with the small vertical engines proceedings (C–570–125) and post CVDs in accordance with the cash deposit rates applicable in that case. Specifically, at this time, the CVDs will be applicable to the value of the small vertical engine, not the residual value of the mower. We are making no change to the scope of this proceeding at this time. As discussed below, we will be setting aside a separate period of time for parties to comment on this issue.

Scope Comments

In accordance with the preamble to Commerce's regulations,[6] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[7] No interested parties timely commented on the scope of the investigation and thus Commerce is not changing the scope language as it appeared in the *Initiation Notice*.[8]

Commerce will be setting aside a separate period of time for parties to comment on the issue of the overlap in the scopes of the lawn mowers and small vertical engines AD and CVD proceedings.

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[9]

In making these findings, Commerce is relying, in part, on facts available. Because we find that one or more respondents failed to cooperate by not acting to the best of their ability to respond to Commerce's requests for information, Commerce drew an adverse inference where appropriate in selecting from among the facts otherwise available.[10] For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of lawn mowers from China based on a request made by the petitioner.[11] Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than March 8, 2021, unless postponed.

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, Commerce calculated individual estimated countervailable subsidy rates for Ningbo Daye Garden Machinery Co., Ltd. (Ningbo Daye) and Zhejiang Amerisun Technology Co. (Zhejiang Amerisun) that are not zero, *de minimis,* or based entirely on facts otherwise available. Commerce calculated the all-others rate using the mandatory respondents' publicly ranged U.S. export sales values for the subject merchandise.[12]

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

[4] *See Certain Vertical Shaft Engines Between 99cc and up to 225cc, and Parts Thereof, from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination,* 85 FR 52086 (August 24, 2020); *see also Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof, from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, and Preliminary Affirmative Determination of Critical Circumstances, in Part,* 85 FR 66932 (October 21, 2020).

[5] *Id.*

[6] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[7] *See Initiation Notice.*

[8] On September 23, 2020, Ningbo Daye requested permission to file comments on the scope language in the *Initiation Notice.* Commerce rejected this request because it was submitted after the deadline.

[9] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[10] *See* sections 776(a) and (b) of the Act.

[11] *See* Petitioner's Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Walk-Behind Lawn Mowers from China: Request to Align Final Countervailing Duty Determination with the Companion Antidumping Duty Final Determination,'' dated October 15, 2020.

[12] We calculated the all-others rate as the weighted average of the estimated subsidy rates for Ningbo Daye and Zhejiang Amerisun, using their publicly ranged U.S. export sales value for the subject merchandise because it is closer to the weighted average of the estimated subsidy rates calculated for the mandatory using their business proprietary export sales values than the simple average of the estimated subsidy rates.

[13] Commerce preliminarily determines that the following company is cross-owned with Ningbo Daye Garden Machinery Co., Ltd.: Zhejiang Jindaye Holdings Limited. *See* Preliminary Decision Memorandum at 36. This rate applies to all cross-owned companies.

Company	Subsidy rate (percent)
Zhejiang Amerisun Technology Co., Ltd	22.74
Ningbo Daye Garden Machinery Co., Ltd[13]	14.68
All Others	17.19

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose to interested parties its calculations and analysis performed in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

Verification

Commerce is currently unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. Accordingly, we intend to take additional steps in lieu of on-site verification. Commerce will notify interested parties of any additional documentation or information required.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. Commerce will notify interested parties of the deadline for the submission of case briefs. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[14] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Parties are reminded that briefs and hearing requests are to be filed electronically using ACCESS and that electronically filed documents must be received successfully in their entirety by 5 p.m. Eastern Time on the due date. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[15]

International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: October 23, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation consists of certain rotary walk-behind lawn mowers, which are grass-cutting machines that are powered by internal combustion engines. The scope of the investigation cover certain walk-behind lawn mowers, whether self-propelled or non-self-propelled, whether finished or unfinished, whether assembled or unassembled, and whether containing any additional features that provide for functions in addition to mowing.

Walk-behind lawn mowers within the scope of this investigation are only those powered by an internal combustion engine with a power rating of less than 3.7 kilowatts. These internal combustion engines are typically spark ignition, single or multiple cylinder, air cooled, internal combustion engines with vertical power take off shafts with a maximum displacement of 196cc. Walk-behind lawn mowers covered by this scope typically must be certified and comply with the Consumer Products Safety Commission Safety Standard For Walk-Behind Power Lawn Mowers under the 16 CFR part 1205. However, lawn mowers that meet the physical descriptions above, but are not certified under 16 CFR part 1205 remain subject to the scope of this proceeding.

The internal combustion engines of the lawn mowers covered by this scope typically must comply with and be certified under Environmental Protection Agency air pollution controls title 40, chapter I, subchapter U, part 1054 of the Code of Federal Regulations standards for small non-road spark-ignition engines and equipment. However, lawn mowers that meet the physical descriptions above but that do not have engines certified under 40 CFR part 1054 or other parts of subchapter U remain subject to the scope of this proceeding.

For purposes of this investigation, an unfinished and/or unassembled lawn mower means at a minimum, a sub-assembly comprised of an engine and a cutting deck shell attached to one another. A cutting deck shell is the portion of the lawn mower—typically of aluminum or steel—that houses and protects a user from a rotating blade. Importation of the subassembly whether or not accompanied by, or attached to, additional components such as a handle, blade(s), grass catching bag, or wheel(s) constitute an unfinished lawn mower for purposes of this investigation. The inclusion in a third country of any components other than the mower sub-assembly does not remove the lawn mower from the scope. A lawn mower is within the scope of this investigation regardless of the origin of its engine.

The lawn mowers subject to this investigation are typically at subheading: 8433.11.0050. Lawn mowers subject to this investigation may also enter under Harmonized Tariff Schedule of the United States (HTSUS) 8407.90.1010 and 8433.90.1090. The HTSUS subheadings are provided for convenience and customs purposes only, and the written description of the merchandise under investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[14] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements); *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[15] *See Temporary Rule.*

VII. Subsidies Valuation
VIII. Benchmarks and Interest Rates
IX. Analysis of Programs
X. Calculation of the All-Others Rate
XI. Recommendation

[FR Doc. 2020–24050 Filed 10–29–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–125]

Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof From the People's Republic of China: Preliminary Affirmative Determination of Critical Circumstances, in Part, in the Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that critical circumstances exist, in part, with respect to imports of certain vertical shaft engines between 99cc and up to 225cc, and parts thereof (small vertical engines) from certain producers and exporters from the People's Republic of China (China).

DATES: Applicable October 30, 2020.

FOR FURTHER INFORMATION CONTACT: Ajay Menon or Adam Simons, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1993 or (202) 482–6172, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 2020, Commerce received a countervailing duty (CVD) petition concerning imports of small vertical engines from China filed in proper form on behalf of the petitioner, Briggs & Stratton Corporation.[1] On April 7, 2020, we initiated this investigation,[2] and on August 24, 2020, we published an affirmative *Preliminary Determination.*[3]

Commerce selected Chongqing Kohler Engines Ltd. (Chongqing Kohler) and Chongqing Zongshen General Power Machine Co. (Chongqing Zongshen) as the individually-examined respondents in this investigation.

On September 24, 2020, the petitioner alleged that critical circumstances exist with respect to imports of small vertical engines from China, pursuant to section 703(e)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.206.[4]

In accordance with section 703(e)(1) of the Act and 19 CFR 351.206(c)(1), because the petitioner submitted its critical circumstance allegations more than 30 days before the scheduled date of the final determination,[5] Commerce will make a preliminary finding as to whether there is a reasonable basis to believe or suspect that critical circumstances exist. Commerce will issue its preliminary finding of critical circumstances within 30 days after the petitioner submits the allegation.[6]

Period of Investigation (POI)

The POI is January 1, 2019 through December 31, 2019.

Critical Circumstances Allegation

The petitioner alleges that there was a massive increase of imports of small vertical engines from China and provided monthly import data for the period January 2020 through June 2020.[7] The petitioner states that a comparison of total imports, by quantity, for the base period January 2020 through March 2020 to the comparison period April 2020 through June 2020, shows that imports of small vertical engines from China increased by 37.01 percent,[8] which is ''massive'' under 19 CFR 351.206(h)(2). The petitioner also alleges that there is a reasonable basis to believe that there are subsidies in this investigation which are inconsistent with the Subsidies and Countervailing Measures Agreement of the World Trade Organization (SCM Agreement).[9]

Critical Circumstances Analysis

Section 703(e)(1) of the Act provides that Commerce will preliminarily determine that critical circumstances exist in a CVD investigation if there is a reasonable basis to believe or suspect that: (A) The alleged countervailable subsidy is inconsistent with the SCM Agreement; [10] and (B) there have been massive imports of the subject merchandise over a relatively short period.

In determining whether there are ''massive imports'' over a ''relatively short period,'' pursuant to section 703(e)(1)(B) of the Act and 19 CFR 351.206(h) and (i), Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.,* the base period) to a comparable period of at least three months following the filing of the petition (*i.e.,* the comparison period). However, the regulations also provide that if Commerce finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, Commerce may consider a period of not less than three months from the earlier time.[11] Imports must increase by at least 15 percent during the comparison period to be considered massive.[12]

Alleged Countervailable Subsidies Are Inconsistent With the SCM Agreement

Chongqing Kohler

In the *Preliminary Determination,* we found that Chongqing Kohler received countervailable subsidies under the ''Export Buyer's Credit Program'' program, which was found to be export contingent in the *Preliminary Determination.*[13] Thus, because we

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[1] *See* Petitioner's Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Vertical Shaft Engines Between 99cc and up to 225cc, and Parts Thereof, from the People's Republic of China,'' dated March 18, 2020 (the Petition).

[2] *See Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 85 FR 20667 (April 14, 2020).

[3] *See Certain Vertical Shaft Engines Between 99cc and up to 225cc, and Parts Thereof, from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination,* 85 FR 52086 (August 24, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[4] *See* Petitioner's Letter, ''Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: Critical Circumstances Allegation,'' dated September 24, 2020 (Critical Circumstances Allegation).

[5] The final determination for this CVD investigation is currently due no later than December 28, 2020.

[6] *See* 19 CFR 351.206(c)(2)(ii). In this case, 30 days after the petitioner submitted the allegation would place the deadline on Saturday, October 24, 2020. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. 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] *See* Critical Circumstances Allegation at Exhibit 1.

[8] *Id.*

[9] *Id.* at 4–5.

[10] Commerce limits its critical circumstances findings to those subsidies contingent upon export performance or use of domestic over imported goods (*i.e.,* those prohibited under Article 3 of the SCM Agreement). *See, e.g., Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire from Germany,* 67 FR 55808, 55809–10 (August 30, 2002).

[11] *See* 19 CFR 351.206(i).

[12] *See* 19 CFR 351.206(h)(2).

[13] *See Preliminary Determination* PDM at 29; *see also* Memorandum, ''Countervailing Duty

Continued

preliminarily found that the ''Export Buyer's Credit Program'' program is export contingent, we preliminarily find that the criterion under section 703(e)(1)(A) of the Act has been met.[14]

Chongqing Zongshen

In the *Preliminary Determination,* we found that Chongqing Zongshen received countervailable subsidies under the ''Export Sellers Credit Program'' program, which was found to be export contingent in the *Preliminary Determination*.[15] Thus, because we preliminarily found that the ''Export Sellers Credit Program'' program is export contingent, we preliminarily find that the criterion under section 703(e)(1)(A) of the Act has been met.

Massive Imports

Commerce compared the import volumes of subject merchandise, as provided by the mandatory respondents, for the five months immediately preceding and following the filing of the petition. Because the petition was filed on March 18, 2020, in order to determine whether there was a massive surge in imports for the mandatory respondents, Commerce compared the total volume of shipments during the period of November 2019 through March 2020 with the volume of shipments during the period from April 2020 through August 2020.[16] With respect to Chongqing Kohler, we preliminarily determine that there was no massive surge in imports between the base and comparison periods.[17] However, with respect to Chongqing Zongshen, we preliminarily determine that there was a massive surge in imports between the base and comparison periods.[18]

For all other exporters and producers, we examined monthly shipment data for the same time periods, using import data from Global Trade Atlas (GTA), adjusted to remove the mandatory respondents' shipment data.[19] However, the quantity of shipments reported by the mandatory respondents was greater than the quantity of imports recorded in the GTA data for U.S. harmonized tariff schedule number 8407.90.10.10. Therefore, we determine that the record does not support a determination that there is a massive surge in imports between the base and comparison periods for all other exporters and producers.[20]

Accordingly, consistent with section 703(e)(1) of the Act, Commerce preliminarily determines that critical circumstances exist for imports of small vertical engines from China with respect to Chongqing Zongshen, but do not exist with respect to Chongqing Kohler and all other exporters or producers not individually examined. For the underlying data and results of Commerce's analysis, *see* the Critical Circumstances Analysis Memo.

Final Determination

We will make a final determination concerning critical circumstances in the final determination of this investigation, which is currently scheduled for December 28, 2020.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. Interested parties will be notified of the timeline for the submission of case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[21] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Suspension of Liquidation

In accordance with section 703(e)(2)(A) of the Act, for Chongqing Zongshen, we intend to direct U.S. Customs and Border Protection (CBP) to suspend liquidation of any unliquidated entries of subject merchandise from the China entered, or withdrawn from warehouse for consumption, on or after May 26, 2020, which is 90 days prior to the date of publication of the *Preliminary Determination* in the **Federal Register**. For such entries, CBP shall require a cash deposit equal to the estimated preliminary subsidy rates established in the *Preliminary Determination*. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we intend to notify the ITC of this preliminary determination of critical circumstances.

This determination is issued and published pursuant to sections 703(f) and 777(i)(1) of the Act.

Dated: October 26, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–24135 Filed 10–29–20; 8:45 am]

BILLING CODE 3510–DS–P

Investigation of Certain Vertical Shaft Engines between 99cc and up to 225cc, and Parts Thereof from the People's Republic of China: Calculation Memorandum for Chongqing Kohler Engines Ltd. (Chongqing Kohler),'' dated August 17, 2020 at Attachment 1.

[14] *See Preliminary Determination* PDM at 25–37.

[15] *Id.* at 28–29.

[16] *See* Chongqing Kohler's Letter, ''Certain Vertical Shaft Engines Between 99cc and 225cc, and Parts Thereof from the People's Republic of China: Chongqing Kohler's Monthly Quantity and Value Data,'' dated October 2, 2020; *see also* Chongqing Zongshen's Letter, ''Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from China; CVD Investigation; Chongqing Zongshen Monthly Q&V Data,'' dated October 2, 2020.

[17] *See* Memorandum, ''Critical Circumstances Shipment Data Analysis,'' dated concurrently with this memorandum at Attachment 1 (Critical Circumstances Analysis Memo).

[18] *Id.*

[19] *Id.*

[20] *See Prestressed Concrete Steel Wire from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination in Part,* 85 FR 59287 (September 21, 2020).

[21] *See* 19 CFR 351.309(d)(1).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–126]

Certain Non-Refillable Steel Cylinders From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that non-refillable steel cylinders (non-refillable cylinders) from People's Republic of China (China) are, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is July 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable October 30, 2020.

FOR FURTHER INFORMATION CONTACT: Katherine Sliney or Joy Zhang, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2437 or (202) 482–1168, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended

(the Act). Commerce published the notice of initiation of this investigation on April 22, 2020.[1] On August 26, 2020, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now October 23, 2020.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are certain non-refillable cylinders from China. For a complete description of the scope of this investigation, *see Appendix I.*

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of all scope related comments submitted to the record for this investigation and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice.

The Preliminary Scope Decision Memorandum establishes the deadline to submit scope case briefs.[7] There will be no further opportunity for comments on scope-related issues.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Because China is a non-market economy, within the meaning of section 771(18) of the Act, Commerce has calculated normal value (NV) in accordance with section 773(c) of the Act.

In addition, Commerce has relied on facts available under section 776(a) of the Act to determine the cash deposit rate assigned to the China-wide entity. Furthermore, pursuant to sections 776(a) and (b) of the Act, because the China-wide entity did not cooperate to the best of its ability in responding to Commerce's requests for data, Commerce preliminarily has relied upon facts otherwise available, with adverse inferences, for the China-wide entity. For a full description of the methodology underlying Commerce's preliminary determination, *see* the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice,*[8] Commerce stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[9] In this investigation, we calculated producer/exporter combination rates for respondents eligible for separate rates.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Sanjiang Kai Yuan Co. Ltd	Sanjiang Kai Yuan Co. Ltd	95.14	77.12
Wuyi Xilinde Machinery Manufacture Co., Ltd	Wuyi Xilinde Machinery Manufacture Co., Ltd	57.83	46.28
Hangzhou JM Chemical Co., Ltd	Hangzhou JM Chemical Co., Ltd	69.09	55.86
Ningbo Eagle Machinery & Technology Co., Ltd.	Jinhua Sinoblue Machinery Manufacturing Co., Ltd.	69.09	58.55
Zhejiang Kin-Shine Technology Co., Ltd	Zhejiang Kin-Shine Technology Co., Ltd	69.09	55.86
T.T. International Co. Ltd	Wuyi Xilinde Machinery Manufacture Co., Ltd	69.09	55.86
ICOOL International Commerce Limited	ICOOL International Commerce Limited	69.09	55.86
China-Wide Entity		114.58	104.04

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the weighted average amount by which normal value exceeds U.S. price, as indicated in the chart

[1] *See Certain Non-Refillable Steel Cylinders from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 85 FR 22402 (April 22, 2020) (*Initiation Notice*).

[2] *See Non-Refillable Steel Cylinders from the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation,* 85 FR 52548 (August 26, 2020).

[3] *See* Memorandum, ''Certain Non-Refillable Steel Cylinders from the People's Republic of China: Decision Memorandum for the Preliminary Affirmative Determination of Sales at the Less-Than-Fair-Value,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* Memorandum, ''Antidumping Duty and Countervailing Duty Investigations on Certain Non-Refillable Steel Cylinders from the People's Republic of China: Preliminary Scope Decision Memorandum'' (Preliminary Scope Decision Memorandum), dated concurrently with this preliminary determination.

[7] Case briefs, other written comments, and rebuttal briefs submitted by in response to this preliminary LTFV determination should not include scope-related issues. *See* Preliminary Scope Decision Memorandum and ''Public Comment'' section of this notice.

[8] *See Initiation Notice,* 85 FR at 22406.

[9] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on Commerce's website at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

above as follows: (1) For the producer/exporter combinations listed in the table above, the cash deposit rate is equal to the estimated weighted-average dumping margin listed for that combination in the table; (2) for all combinations of Chinese producers/exporters of subject merchandise that have not established eligibility for their own separate rates, the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the China-wide entity; and (3) for all third-county exporters of subject merchandise not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the Chinese producer/exporter combination (or China-wide entity) that supplied that third-country exporter.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion countervailing duty (CVD) proceeding when CVD provisional measures are in effect. Accordingly, where Commerce has made a preliminary affirmative determination for domestic subsidy pass-through or export subsidies, Commerce has offset the calculated estimated weighted-average dumping margin by the appropriate rate(s). Any such adjusted rates may be found in the chart of estimated weighted-average dumping margins, above.[10]

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting cash deposits at a rate equal to the estimated weighted-average dumping margins calculated in this preliminary determination unadjusted for the passed-through domestic subsidies or for export subsidies at the time the CVD provisional measures expire.

These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

Commerce is currently unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. Accordingly, we intend to take additional steps in lieu of on-site verification. Commerce will notify interested parties of any additional documentation or information required.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance. A timeline for the submission of case briefs and written comments will be provided to interested parties at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[11] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. Pursuant to 19 CFR 351.210(e)(2), Commerce requires that requests by respondents for postponement of a final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On October 15, 2020 and October 16, 2020, pursuant to 19 CFR 351.210(e), Wuyi Xilinde Machinery Manufacture Co., Ltd. (Wuyi Xilinde) and Sanjiang Kai Yuan Co. Ltd. (SKY) requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months, respectively.[12] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce's final determination will publish no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination of sales at LTFV. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

[10] For further discussion of the methodology and calculation of these adjustments, *see* Preliminary Decision Memorandum; *see also* Memorandum, ''Calculation of Export Subsidy Adjustments for the Preliminary Determination,'' dated concurrently with this notice.

[11] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements); *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020) (*Temporary Rule*); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[12] *See* Wuyi Xilinde's Letter, ''Certain Non-Refillable Steel Cylinders from the People's Republic of China: Request to Postpone the Final Determination of the Investigation,'' dated October 15, 2020; *see also* SKY's Letter, ''Certain Non-Refillable Steel Cylinders from China; A–570–126; Request to Postpone the Final Determination,'' dated October 16, 2020.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: October 23, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is certain seamed (welded or brazed), non-refillable steel cylinders meeting the requirements of, or produced to meet the requirements of, U.S. Department of Transportation (USDOT) Specification 39, TransportCanada Specification 39M, or United Nations pressure receptacle standard ISO 11118 and otherwise meeting the description provided below (non-refillable steel cylinders). The subject non-refillable steel cylinders are portable and range from 300-cubic inch (4.9 liter) water capacity to 1,526-cubic inch (25 liter) water capacity. Subject non-refillable steel cylinders may be imported with or without a valve and/or pressure release device and unfilled at the time of importation. Non-refillable steel cylinders filled with pressurized air otherwise meeting the physical description above are covered by this investigation.

Specifically excluded are seamless non-refillable steel cylinders.

The merchandise subject to this investigation is properly classified under statistical reporting numbers 7311.00.0060 and 7311.00.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). The merchandise may also enter under HTSUS statistical reporting numbers 7310.29.0025 and 7310.29.0050. Although the HTSUS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2020–24064 Filed 10–29–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA512]

Scientific Advisory Subcommittee to the General Advisory Committee and General Advisory Committee to the U.S. Section to the Inter-American Tropical Tuna Commission; Meeting Announcements

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

ACTION: Notice of public meeting.

SUMMARY: NMFS announces a combined public meeting of the Scientific Advisory Subcommittee (SAS) to the General Advisory Committee (GAC), and the GAC to the U.S. Section to the Inter-American Tropical Tuna Commission (IATTC). This meeting will be held virtually on November 10, 2020, via webinar. The meeting topics are described under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The virtual meeting of the SAS and GAC will be held on November 10, 2020, from 8:30 a.m. to 1 p.m. PST (or until business is concluded).

ADDRESSES: Please notify William Stahnke (see **FOR FURTHER INFORMATION CONTACT**) if you plan to attend the webinar. Instructions will be emailed to meeting participants before the meeting occurs.

FOR FURTHER INFORMATION CONTACT: William Stahnke, West Coast Region, NMFS, at *william.stahnke@noaa.gov,* or at (562) 980–4088.

SUPPLEMENTARY INFORMATION: On June 18, 2020, NMFS hosted a combined virtual SAS and GAC meeting (85 FR 36562; June 17, 2020), in which NMFS indicated that it would host a second virtual SAS and GAC meeting on a date to be determined later in the year based on scheduling for relevant IATTC meetings. The IATTC Scientific Advisory Committee (SAC) meeting was held on October 26–28, 2020, and the IATTC annual meeting is expected to be held from November 30 to December 4, 2020. As such, NMFS is hosting a second virtual SAS and GAC meeting where priority items such as final stock assessments, tropical tuna management measures, Pacific bluefin tuna measures, observer issues, and other administrative topics will be discussed in light of information presented at the SAC meeting, in advance of the IATTC annual meeting.

In accordance with the Tuna Conventions Act (16 U.S.C. 951 *et seq.*), the U.S. Department of Commerce, in consultation with the Department of State (the State Department), appoints a GAC to the U.S. Section to the IATTC, and a SAS that advises the GAC. The U.S. Section consists of the four U.S. Commissioners to the IATTC and representatives of the State Department, NOAA, Department of Commerce, other U.S. Government agencies, and stakeholders. The GAC advises the U.S. Section with respect to U.S. participation in the work of the IATTC, focusing on the development of U.S. policies, positions, and negotiating tactics. The purpose of the SAS is to advise the GAC on scientific matters. NMFS West Coast Region staff provide administrative support for the SAS and GAC. The meetings of the SAS and GAC are open to the public, unless in executive session. The time and manner of public comment will be at the discretion of the Chairs for the SAS and GAC.

Currently, the 95th meeting of the IATTC and IATTC working group meetings are scheduled to be held, in a virtual format, from November 30 to December 4, 2020. For more information and updates on these meetings, please visit the IATTC's website: *https://www.iattc.org/MeetingsENG.htm.*

SAS and GAC Meeting Topics

As was the case at the prior combined SAS and GAC meeting (85 FR 36562; June 17, 2020), this SAS and GAC meeting will also have a streamlined agenda.

The meeting agenda will include, but is not limited to, the following topics:

(1) Outcomes of the final 2020 stock assessments and stock status updates for tuna, tuna-like species, and other species caught in association with those fisheries in the eastern Pacific Ocean;

(2) Evaluation of the IATTC Staff's Recommendations to the Commission for 2020;

(3) Discussion of tropical tuna management measure, Pacific Bluefin tuna measures, observer issues, and administrative topics;

(4) Recommendations and evaluations by the SAS and GAC; and

(5) Other issues as they arise.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to William Stahnke (see **FOR FURTHER INFORMATION CONTACT**).

(Authority: 16 U.S.C. 951 *et seq.*)

Dated: October 26, 2020.

Jennifer M. Wallace,

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

[FR Doc. 2020–24030 Filed 10–29–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Electric Boat Corporation of New York State Department of State Objection

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of extension of time to issue a decision.

SUMMARY: This announcement provides notice that the deadline for issuing a decision has been extended by 15 days in the administrative appeal filed with the Department of Commerce by Electric Boat Corporation requesting that the Secretary of Commerce (Secretary) override an objection by the New York State Department of State to a consistency certification for a proposed project to dispose of dredged material in the Eastern Long Island Sound Dredged Material Disposal Site.

DATES: The new deadline for issuing a decision on Electric Boat Corporation's federal consistency appeal of New York State Department of State's objection is November 16, 2020.

ADDRESSES: NOAA has provided access to publicly available materials and related documents comprising the appeal record on the following website: *https://www.regulations.gov/docket?D=NOAA-HQ-2020-0021.*

FOR FURTHER INFORMATION CONTACT: For questions about this Notice, contact Lauren Bregman, NOAA Office of the General Counsel, Oceans and Coasts Section, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910, (301) 713–7389, *lauren.bregman@noaa.gov.*

SUPPLEMENTARY INFORMATION: On January 24, 2020, the NOAA Administrator, pursuant to authority delegated by the Secretary to decide Coastal Zone Management Act of 1972 (CZMA) federal consistency appeals, received a ''Notice of Appeal'' filed by Electric Boat Corporation (EBC or ''Appellant'') under the CZMA, 16 U.S.C. 1451 *et seq.,* and implementing regulations found at 15 CFR part 930, subpart H. The Notice of Appeal is taken from an objection by the New York State Department of State to Appellant's consistency certification for a proposed U.S. Army Corps of Engineers permit to dispose of dredged material in the Eastern Long Island Sound Dredged Material Disposal Site.

Under the CZMA, the NOAA Administrator may override New York State Department of State's objection on grounds that the project is consistent with the objectives or purposes of the CZMA, or is necessary in the interest of national security. To make the determination that the proposed activity is ''consistent with the objectives or purposes of the CZMA,'' the Department of Commerce must find that: (1) The proposed activity furthers the national interest as articulated in sections 302 or 303 of the CZMA, in a significant or substantial manner; (2) the national interest furthered by the proposed activity outweighs the activity's adverse coastal effects, when those effects are considered separately or cumulatively; and (3) no reasonable alternative is available that would permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the applicable coastal management program. 15 CFR 930.121. To make the determination that the proposed activity is ''necessary in the interest of national security,'' the NOAA Administrator must find that a national defense or other national security interest would be significantly impaired if the proposed activity is not permitted to go forward as proposed. 15 CFR 930.122.

On September 1, 2020, NOAA published a **Federal Register** Notice announcing closure of the appeal decision record. 85 FR 54355. Under the CZMA, a final decision on the appeal must be issued no later than 60 days after publication of the notice announcing closure of the decision record. 16 U.S.C. 1465(b)(3). This deadline may be extended, though, by publishing (within the 60-day period) a subsequent notice explaining why a decision cannot be issued within that time frame. 16 U.S.C. 1465(c)(1). In that event, a final decision must be issued no later than 15 days after the date of publication of the subsequent notice. 16 U.S.C. 1465(c)(2).

This announcement provides notice that the deadline for issuing a decision on this appeal has been extended by 15 days. The additional time is needed to complete a review of the record and reach a decision. A decision on the federal consistency appeal will be issued no later than November 16, 2020.

(Authority Citation: 16 U.S.C. 1465(c); 15 CFR 930.130(b).)

Adam Dilts,

Chief, Oceans and Coasts Section, NOAA Office of General Counsel.

[FR Doc. 2020–24013 Filed 10–29–20; 8:45 am]

BILLING CODE 3510–JE–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed additions and deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from the Procurement List.

SUMMARY: The Committee is proposing to add product(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes service(s) previously furnished by such agencies.

DATES: Comments must be received on or before: November 29, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following product(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Product(s)

NSN(s)—Product Name(s):
7930–01–621–6646—Detergent, Dishwashing, EPA Certified, BX/4 Bottles
7930–01–618–2179—Rinse Additive, Dishwasher, EPA Certified, 2 Bottles

7930–00–NIB–2190—Cleaner, Degreaser, Multipurpose, EPA Certified
7930–00–NIB–2191—Pre-Soak, Flatware, EPA Certified
7930–00–NIB–2192—De-Limer/De-Scaler, Dishwasher, EPA Certified
7930–00–NIB–2193—Cleaner, Floor, Environmentally Safe
Designated Source of Supply: Asso. for the Blind and Visually Impaired-Goodwill Industries of Greater Rochester, Inc., Rochester, NY
Mandatory For: Total Government Requirement
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FSS GREATER SOUTHWEST ACQUISITI

Deletions

The following service(s) are proposed for deletion from the Procurement List:

Services

Service Type: Data Entry/Telephone
Mandatory for: GSA, FAS, Heartland Acquisition Center, Integrated Facilities Management & Industrial Products Solutions Center, Kansas City, MO
Designated Source of Supply: JobOne, Independence, MO
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FAS TOOLS ACQUISITION DIVISION
Service Type: Janitorial/Custodial
Mandatory for: GSA, Parking Lot Bismark: 1st and Thayer Streets, Bismarck, ND
Designated Source of Supply: Pride, Inc., Bismarck, ND
Contracting Activity: PUBLIC BUILDINGS SERVICE, PBS R8
Service Type: Janitorial/Custodial
Mandatory for: GSA, Storage Building: 117 Main Street, Bismarck, ND
Designated Source of Supply: Pride, Inc., Bismarck, ND
Contracting Activity: PUBLIC BUILDINGS SERVICE, PBS R8
Service Type: Custodial Services
Mandatory for: Department of Veterans Affairs, Community Based Outpatient Clinic, 225 Boston Road, Lynn, MA
Mandatory for: Department of Veterans Affairs, Community Based Outpatient Clinic, 108 Merrimack Street, Haverhill, MA
Designated Source of Supply: Morgan Memorial Goodwill Industries, Boston, MA
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, 241–NETWORK CONTRACT OFFICE 01
Service Type: Installation Support Services
Mandatory for: US Army, Fort Hood, Fort Hood, TX
Designated Source of Supply: Training, Rehabilitation, & Development Institute, Inc., San Antonio, TX
Contracting Activity: DEPT OF THE ARMY, W6QM MICC–FDO FT HOOD
Service Type: Janitorial/Custodial
Mandatory for: Internal Revenue Service: 11501 and 11601 Roosevelt Boulevard, Philadelphia, PA
Contracting Activity: INTERNAL REVENUE SERVICE, DEPT OF TREAS, IRS, OFC OF PROCUREMENT OPERATIONS
Service Type: Mailroom Operation
Mandatory for: GSA, Arlington: Crystal Mall #3, Arlington, VA
Designated Source of Supply: Didlake, Inc., Manassas, VA
Contracting Activity: OFFICE OF THE ADMINISTRATOR (ACMD), THE INTERNAL ACQUISITION DIVISION (IAD)
Service Type: Janitorial/Custodial
Mandatory for: Denver Federal Center: Buildings 76, 80, 93 and 94, Denver, CO
Designated Source of Supply: North Metro Community Services for Developmentally Disabled, Westminster, CO
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR
Service Type: Janitorial/Custodial
Mandatory for: Denver Federal Center: Building 75, 80 (+3 adjacent trailers), 82, 83K, 85, 710, 710A and 810, Denver, CO
Designated Source of Supply: North Metro Community Services for Developmentally Disabled, Westminster, CO
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Michael R. Jurkowski,

Deputy Director, Business & PL Operations.

[FR Doc. 2020–24119 Filed 10–29–20; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds product(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date added to the Procurement List:* November 29, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 4/3/2020 and 5/1/2020, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the product(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product(s) to the Government.

2. The action will result in authorizing small entities to furnish the product(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of

the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product(s) are added to the Procurement List:

Products

NSN(s)—Product Name(s):
6508–00–NIB–0002—Refill, PURELL–SKILCRAFT, Healthcare Advanced Hand Sanitizer, Ultra Nourishing Foam, ES8 System
6508–00–NIB–0003—Refill, PURELL–SKILCRAFT, Healthcare Advanced Hand Sanitizer, Gentle & Free Foam, ES8 System
Designated Source of Supply: Travis Association for the Blind, Austin, TX
Mandatory For: Total Government Requirement
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT

NSN(s)—Product Name(s):
3612–00–NIB–0002—3D Printer Filament, Acrylonitrile Butadiene Styrene, Black, 1kg of 1.75 mm
3612–00–NIB–0003—3D Printer Filament, Acrylonitrile Butadiene Styrene, White, 1kg of 1.75 mm
3612–00–NIB–0004—3D Printer Filament, Acrylonitrile Butadiene Styrene, Natural, 1kg of 1.75 mm
3612–00–NIB–0005—3D Printer Filament, Polylactic Acid, Black, 1kg of 1.75 mm
3612–00–NIB–0006—3D Printer Filament, Polylactic Acid, White, 1kg of 1.75 mm
3612–00–NIB–0007—3D Printer Filament, Polylactic Acid, Natural, 1kg of 1.75 mm

3612–00–NIB–0008—3D Printer Filament, Nylon, Black, 1kg of 1.75 mm
3612–00–NIB–0010—3D Printer Filament, Nylon, Natural, 1kg of 1.75 mm
Designated Source of Supply: North Central Sight Services, Inc., Williamsport, PA
Mandatory For: Total Government Requirement
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FAS FURNITURE SYSTEMS MGT DIV

Michael R. Jurkowski,

Deputy Director, Business & PL Operations.

[FR Doc. 2020–24120 Filed 10–29–20; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Tuesday, November 10, 2020, 10:00 a.m.

PLACE: This meeting will be conducted by remote means via (GoToWebinar)

STATUS: Commission Meeting—Open to the Public

MATTER TO BE CONSIDERED: Decisional Matter: Fiscal Year 2021 Operating Plan

ATTENDANCE: Due to the COVID 19 Pandemic this Commission Meeting will be held by remote means. If you would like to attend the meeting follow the directions under virtual meeting attendance on CPSC.gov: *https://www.cpsc.gov/Newsroom/Public-Calendar.*

CONTACT PERSON FOR MORE INFORMATION: Alberta Mills, Office of the Secretariat, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–6833 (Office) or (240)–863–8938 (Cell).

Dated: October 27, 2020.

Alberta E. Mills,

Secretary.

[FR Doc. 2020–24159 Filed 10–28–20; 11:15 am]

BILLING CODE 6355–01–P

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

SES Performance Review Board

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of new members to the Court Services and Offender Supervision Services for the District of Columbia (CSOSA) and the Pretrial Services Agency for the District of Columbia (PSA), Senior Executive Service (SES) Performance Review Board (PRB). PSA is an independent agency within CSOSA. The PRB assures consistency, stability, and objectivity in the appraisal process.

DATES: *Effective:* November 1, 2018 to February 2021.

FOR FURTHER INFORMATION CONTACT: William Layne, Assistant Director, Human Capital Planning and Executive Resources, Court Services and Offender Supervision Agency for the District of Columbia, 800 North Capitol Street NW, Suite 701, Washington, DC 20005, (202) 220–5637.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) of Title 5 of the United States Code requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES PRBs. (Section 4314(c)(4) requires that notice of appointment of PRB members be published in the **Federal Register**. The PRB is responsible for making recommendations to the appointing and awarding authority on the performance appraisal ratings and performance awards for SES employees. Members of the PRB will serve a term that shall begin on November 21, 2020. The following executives have been designated as members of the Performance Review Board for CSOSA and PSA:

Lisa Greene, Chief of Staff for CSOSA
Reggie James, Reginald James, Associate Director for the Office of Administration for CSOSA
Paul Girardo, Associate Director for the Office of Financial Management for CSOSA
Leslie Cooper, Director for PSA
Victor Valentino Davis, Assistant Director for Defendant Engagement and Systems Support for PSA

Dated: October 27, 2020.

Rochelle Durant,

Federal Register Liaison.

[FR Doc. 2020–24097 Filed 10–29–20; 8:45 am]

BILLING CODE 3129–04–P

INTERNATIONAL DEVELOPMENT FINANCE CORPORATION

[DFC–014]

Submission for OMB Review; Comments Request

AGENCY: U.S. International Development Finance Corporation (DFC).

ACTION: Notice of Information Collection; request for comment.

SUMMARY: Under the provisions of the Paperwork Reduction Act, agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency is creating a new information collection for OMB review and approval and requests public review and comment on the submission. The agencies received no comments in response to the sixty (60) day notice. The purpose of this notice is to allow an additional thirty (30) days for public comments to be submitted. Comments are being solicited on the need for the information; the accuracy of the burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

DATES: Comments must be received by November 30, 2020.

ADDRESSES: Comments and requests for copies of the subject information collection may be sent by any of the following methods:

- *Mail:* Joanna Reynolds, Agency Submitting Officer, U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527.
- *Email: fedreg@dfc.gov*

Instructions: All submissions received must include the agency name and agency form number or OMB form number for this information collection. Electronic submissions must include the agency form number in the subject line to ensure proper routing. Please note that all written comments received in response to this notice will be considered public records.

FOR FURTHER INFORMATION CONTACT: Agency Submitting Officer: Joanna Reynolds, (202) 357–3979.

SUPPLEMENTARY INFORMATION: DFC is submitting its Application for DPA–DFC Loan Program (DFC–014) to OMB for review and approval. This collection was previously granted an emergency clearance by OMB on June 5, 2020. The emergency clearance expires on December 31, 2020 and DFC is now seeking a regular clearance. The agencies received no comments in response to the sixty (60) day notice published in **Federal Register** volume 85 page 51418 on August 20, 2020.

Summary Form Under Review

Title of Collection: Application for DPA–DFC Loan Program.

Type of Review: Extension without change of a currently approved information collection.

Agency Form Number: DFC–014.

OMB Form Number: 3015–0013.

Frequency: Once per investor per project.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals.

Total Estimated Number of Annual Number of Respondents: 100.

Estimated Time Per Respondent: 1 hour.

Total Estimated Number of Annual Burden Hours: 100 hours.

Abstract: DFC–014 Application for DFC–DPA Loan Program is the principal document to be used by the U.S. International Development Finance Corporation (''DFC'') to determine if the proposed transaction is eligible for DFC–DPA financing and whether it meets required underwriting criteria.

Dated: October 27, 2020.

Nichole Skoyles,

Administrative Counsel, Office of the General Counsel.

[FR Doc. 2020–24142 Filed 10–29–20; 8:45 am]

BILLING CODE 3210–01–P

INTERNATIONAL DEVELOPMENT FINANCE CORPORATION

[DFC–015]

Submission for OMB Review; comments request

AGENCY: U.S. International Development Finance Corporation (DFC).

ACTION: Notice of Information Collection; request for comment.

SUMMARY: Under the provisions of the Paperwork Reduction Act, agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency is creating a new information collection form for OMB review and approval and requests public review and comment on the submission. The agencies received no comments in response to the sixty (60) day notice. The purpose of this notice is to allow an additional thirty (30) days for public comments to be submitted. Comments are being solicited on the need for the information; the accuracy of the burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

DATES: Comments must be received by November 30, 2020.

ADDRESSES: Comments and requests for copies of the subject information collection may be sent by any of the following methods:

• *Mail:* Joanna Reynolds, Agency Submitting Officer, U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527.

• *Email: fedreg@dfc.gov.*

Instructions: All submissions received must include the agency name and agency form number or OMB form number for this information collection. Electronic submissions must include the agency form number in the subject line to ensure proper routing. Please note that all written comments received in response to this notice will be considered public records.

FOR FURTHER INFORMATION CONTACT: Agency Submitting Officer: Joanna Reynolds, (202) 357–3979.

SUPPLEMENTARY INFORMATION: The agency received no comments in response to the sixty (60) day notice published in **Federal Register** volume 85 page 51684 on August 21, 2020. Upon publication of this notice, DFC will submit to OMB a request for approval of the following information collection.

Summary Form Under Review

Title of Collection: MTU Intake Questionnaire.

Type of Review: New information collection.

Agency Form Number: DFC–015.

OMB Form Number: Not assigned, new information collection.

Frequency: Once per investor and per project.

Affected Public: Business, other for-profit; not-for-profit institutions.

Total Estimated Number of Annual Number of Respondents: 130.

Estimated Time Per Respondent: 1 hour

Total Estimated Number of Annual Burden Hours: 130 hours.

Abstract: The MTU Intake Questionnaire is the principal document used to collect information from potential clients seeking support from the Mission Transaction Unit (MTU) of DFC. MTU works together with USAID missions and operating units to promote and advance the agencies' development objectives around the world.

Dated: October 27, 2020.

Nichole Skoyles,

Administrative Counsel, Office of the General Counsel.

[FR Doc. 2020–24144 Filed 10–29–20; 8:45 am]

BILLING CODE 3210–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD–2020–OS–0089]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition and Sustainment, Department of Defense (DoD).

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Acquisition and Sustainment announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 29, 2020.

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: The DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

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 Armed Forces Pest

Management Board (AFPMB), Contingency Liaison Office, ATTN: Captain Eric Hoffman, 2460 Linden Lane, Bldg. 172, Silver Spring, MD 20910, or call the AFPMB Contingency Liaison Office at 301–295–7476.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Pre-Embarkation Certificate of Disinsection; DD 3044; OMB Control Number 0704–0568.

Needs and Uses: The information collection requirement is necessary to provide proof of aircraft disinsection to foreign countries that require it, before cargo and aircrew will be allowed to dis-embark in those countries.

Affected Public: Individuals or households.

Annual Burden Hours: 166.7.

Number of Respondents: 1,000.

Responses per Respondent: 1.

Annual Responses: 1,000.

Average Burden per Response: 10 minutes.

Frequency: On occasion.

Respondents are DoD-contracted pest managers. These pest management professionals would be required to fill out the certificate of disinsection, log it in the appropriate database, and provide a copy to the aircrew. Aircraft disinsection (spraying with insecticide to kill all insects aboard) is currently required in 14 countries for arriving military aircraft. Most of those countries also require documentation proving that the aircraft was disinsected, per their instructions in the Foreign Clearance Guide (FCG). The burden for this collection is calculated based on the number of times U.S. aircraft currently enter countries with the requirement to produce a certificate of disinsection. The certificates used, are unique to each of the countries with the requirement. They are not collections managed by the U.S. Government. The Armed Forces Pest Management Board (AFPMB) published technical guide (TG) for pest managers and aircrew to follow. This guidance standardizes our requirements for disinsection in the FCG for all countries our aircraft enter. One such requirement is the use of a standardized form by all DoD that satisfies the documentation requirements of disinsection for these 14 countries.

Dated: October 27, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–24121 Filed 10–29–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2020–HQ–0008]

Proposed Collection; Comment Request

AGENCY: Marine Junior Reserve Officer's Training Corps (MCJROTC), Department of Defense (DoD).

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Marine Junior Reserve Officer's Training Corps announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 29, 2020.

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: The Department of Defense (DoD) cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

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 Office of the Department of the Navy Information Management Control Officer, 2000 Navy Pentagon, Rm. 4E563, Washington, DC 20350, Ms. Barbara Figueroa or call 703–614–7885.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Individual MCJROTC Instructor Evaluation Summary; NAVMC 10942; OMB Control Number 0703–0016.

Needs and Uses: The information collection requirement is necessary to provide a written record of the overall performance of duty of MCJROTC instructors who are responsible for implementing the MCJROTC curriculum. The individual MCJROTC Instructor Evaluation Summary is completed by principles to evaluate the effectiveness of individual MCJROTC instructors. The form is further used as a performance related counseling tool and as a record of service performance to document performance and growth of individual MCJROTC instructors. Evaluating the performance of instructors is essential in ensuring that they provide quality training.

Affected Public: Individuals or households.

Annual Burden Hours: 254.5.

Number of Respondents: 509.

Responses per Respondent: 1.

Annual Responses: 509.

Average Burden per Response: 30 minutes.

Frequency: On occasion.

Dated: October 27, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–24106 Filed 10–29–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0167]

Agency Information Collection Activities; Comment Request; Personal Authentication Service (PAS) for FSA ID

AGENCY: Federal Student Aid, 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 December 29, 2020.

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–

2020–SCC–0167. 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 Beth Grebeldinger, 202–377–4018.

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: Personal Authentication Service (PAS) for FSA ID.

OMB Control Number: 1845–0131.

Type of Review: Extension without change of a currently approved collection.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 6,671,000.

Total Estimated Number of Annual Burden Hours: 1,667,750.

Abstract: Federal Student Aid (FSA) requests extension of the Person Authentication Service (PAS) which creates an FSA ID, a standard user name and password solution. In order to create an FSA ID to gain access to certain FSA systems (FAFSA on the Web, NSLDS, StudentLoans.gov, etc.) a user must register on-line for an FSA ID account. The FSA ID allows the customer to have a single identity, even if there is a name change or change to other personally identifiable information. The information collected to create the FSA ID enables electronic authentication and authorization of users for FSA web-based applications and information and protects users from unauthorized access to user accounts on all protected FSA sites.

Dated: October 27, 2020.

Kate 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. 2020–24117 Filed 10–29–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–486]

Application to Export Electric Energy; Clear Power LLC

AGENCY: Office of Electricity, Department of Energy.

ACTION: Notice of application.

SUMMARY: Clear Power LLC (Applicant or Clear Power) has applied for authorization to transmit electric energy from the United States to Mexico pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before November 30, 2020.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to (202) 586–8008.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) regulates exports of electricity from the United States to a foreign country, pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 42 U.S.C. 7172(f)). Such exports require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On September 2, 2020, Clear Power filed an application with DOE (Application or App.) to transmit electric energy from the United States to Mexico for a term of five years. Clear Power states that it ''is a California limited liability corporation with its principal place of business [in] Folsom, CA.'' App. at 1. Clear Power represents that it ''is a wholly-owned subsidiary of the Alaywan Trust which owns or is affiliated with entities that own or control a combined 11.0 MW (nameplate) of operating renewable generation facilities, all located in the [California Independent System Operator] market.'' *Id.* Clear Power adds, however, that it ''does not own or control any electric power generation, transmission or distribution facilities.'' *Id.* at 2.

Clear Power further states that it ''will purchase the power it plans to export voluntarily through the electric energy markets in the United States . . . and/or from electric utilities, wholesale generators, power marketers, and other parties, and thus such power will be surplus to the needs of the selling parties or organization[s].'' App. at 3. Clear Power contends that its exports ''will not impair or tend to impede the sufficiency of electric power supplies in the United States or the regional coordination of electric utility planning or operation.'' *Id.*

Clear Power states that it will conduct its operations ''in compliance with any authorization conditions imposed by the Department consistent with its prior orders authorizing power marketers'; blank authority to export power.'' App. at 4. Clear Power also represents that its exports ''will not exceed the export limits for the transmission facilities [it uses], or otherwise cause a violation of the terms and conditions established in the export authorization.'' *Id.* at 5.

The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding

should file a comment or protest to the Application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning Clear Power's application to export electric energy to Mexico should be clearly marked with OE Docket No. EA–486. Additional copies are to be provided directly to Ziad Alaywan, 604 Sutter Street, Suite 250, Folsom, California 95630, *ziad@zglobal.biz;* Andrew B. Brown, 2600 Capital Avenue, Suite 400, Sacramento, California 95816, *abb@eslawfirm.com;* and Ronald Liebert, 2600 Capital Avenue, Suite 400, Sacramento, California 95816, *rl@eslawfirm.com.*

A final decision will be made on the Application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE determines that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of the Application will be made available, upon request, by accessing the program website at *http://energy.gov/node/11845,* or by emailing Matthew Aronoff at *matthew.aronoff@hq.doe.gov.*

Signed in Washington, DC, on October 27, 2020.

Christopher Lawrence,

Management and Program Analyst, Transmission Permitting and Technical Assistance, Office of Electricity.

[FR Doc. 2020–24090 Filed 10–29–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–410–B]

Application To Export Electric Energy; CWP Energy, Inc.

AGENCY: Office of Electricity, Department of Energy.

ACTION: Notice of application.

SUMMARY: CWP Energy, Inc. (Applicant or CWP Energy) has applied for authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before November 30, 2020.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to (202) 586–8008.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) regulates exports of electricity from the United States to a foreign country, pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 42 U.S.C. 7172(f)). Such exports require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On October 13, 2020, CWP Energy filed an application with DOE (Application or App.) to transmit electric energy from the United States to Canada for a term of five years. CWP Energy represents that it is a subsidiary of McGill-St. Laurent, a Canada Corporation with its principal place of business in Montréal, Québec, Canada. The Applicant adds that ''McGill-St. Laurent and its division CWP Energy, Inc., is owned by two individuals, Mr. Phillipe Boisclair, as a majority owner and Mr. Christian L'Abbe as a minority owner.'' App. at 2. CWP Energy adds that ''Mr. Boisclair and Mr. L'Abbe do not have any ownership interest or involvement in any other company that is a traditional utility or that owns, operates, or controls any electric generation, transmission or distribution facilities, nor do they have any direct involvement with the energy industry other than through the ownership of CWP Energy.'' *Id.*

CWP Energy further states that it ''will purchase power to be exported from a variety of sources such as power marketers, independent power producers, or U.S. electric utilities and federal power marketing entities as those terms are defined in Sections 3(22) and 3(19) of the FPA.'' App. at 3. CWP Energy contends that any power it purchases for export would be ''surplus to the system of the generator and, therefore, the electric power that [it] will export on either a firm or interruptible basis will not impair the sufficiency of the electric power supply within the U.S.'' *Id.* at 3–4.

CWP Energy states that it will ''abide by the general conditions consistent with DOE's previous grants of authorization to power marketers as set forth in its previous orders.'' App. at 4. It also represents that its exports ''will not exceed the export limits for the facilities, or otherwise cause a violation of the terms and conditions set forth in the export authorizations for each.'' *Id.* at 5.

The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning CWP Energy's application to export electric energy to Canada should be clearly marked with OE Docket No. EA–410–B. Additional copies are to be provided directly to Ruta Kalvaitis Skučas, 1875 K St. NW, Suite 700, Washington, DC 20006, *rskucas@pierceatwood.com;* Pascal Massey, 407 McGill Street, Suite 315, Montreal, PQ, H2Y 2G3, *Pascal@canadianwood.ca.*

A final decision will be made on the Application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE determines that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of the Application will be made available, upon request, by accessing the program website at *http://energy.gov/node/11845,* or by emailing Matthew Aronoff at *matthew.aronoff@hq.doe.gov.*

Signed in Washington, DC, on October 26, 2020.

Christopher Lawrence,

Management and Program Analyst, Transmission Permitting and Technical Assistance, Office of Electricity.

[FR Doc. 2020–24027 Filed 10–29–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP21–90–000.

Applicants: NEXUS Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate—Noble Gas to DTE Energy 960614 to be effective 11/1/2020.

Filed Date: 10/23/20.

Accession Number: 20201023–5002

Comments Due: 5 p.m. ET 11/4/20.

Docket Numbers: RP21–91–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: NRA Oct. 2020 Name Change Cleanup Bay State to Eversource to be effective 11/23/2020.

Filed Date: 10/23/20.

Accession Number: 20201023–5003.

Comments Due: 5 p.m. ET 11/4/20.

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: October 26, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–24084 Filed 10–29–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 539–015]

Lock 7 Hydro Partners, LLC; Notice of Intent To Waive Part of the Pre-Filing Three Stage Consultation Process

a. *Type of Application:* New Major License.

b. Project No.: 539–015.

c. *Date Filed:* April 30, 2020.

d. *Applicant:* Lock 7 Hydro Partners, LLC (Lock 7 Hydro).

e. *Name of Project:* Mother Ann Lee Hydroelectric Station Water Power Project.

f. *Location:* The project is located on the Kentucky River in Mercer, Jessamine, and Garrard Counties, Kentucky. The project does not occupy federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825 (r).

h. *Applicant Contact:* David Brown Kinloch, Lock 7 Hydro, 414 S Wenzel St., Louisville, Kentucky 40204; (502) 589–0975 or *kyhydropower@gmail.com.*

i. *FERC Contact:* Joshua Dub at (202) 502–8138 or *joshua.dub@ferc.gov.*

j. In a letter filed September 28, 2020, Lock 7 Hydro requested to waive pre-filing consultation sections 16.8(c)(4–9), which require distribution and consultation on a draft license application.

In its request, Lock 7 Hydro indicated that on July 17, 2020, a Certified Letter was sent to all relevant agencies and potentially affected Indian tribes requesting waiver of the second stage consultation requirements. No consulted entities expressed an objection to the Commission granting waiver of second stage consultation. By email dated July 22, 2020, and filed with Lock 7 Hydro's request for waiver, the Kentucky Division of Water indicated that it had no questions or concerns about the proposed waiver.

Pursuant to section 16.8(e)(1) the Commission's regulations, waiver of second stage consultation may be granted if a resource agency or Indian tribe waives in writing compliance with consultation requirements. Because no agencies or tribes expressed an objection to the request for this waiver, we intend to waive the second stage consultation requirement.

Dated: October 26, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–24102 Filed 10–29–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–4–000]

Transwestern Pipeline Company, LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on October 8, 2020, Transwestern Pipeline Company, LLC (Transwestern), 1300 Main Street, Houston, TX 77002, filed an application under section 7(b) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations requesting authorization to abandon in place the Linam Ranch Meter Station and approximately 2,446 feet of 10-inch-diameter piping in Lea County, New Mexico (Linam Ranch Project), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://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.

Any questions regarding the proposed project should be directed to Kelly Allen, Manager, Regulatory Affairs, Transwestern Pipeline Company, LLC, 1300 Main Street, Houston, Texas 77002, or by phone at (713) 989–2606, or by email at *Kelly.Allen@energytransfer.com.*

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: Complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other

[1] 18 CFR (Code of Federal Regulations) § 157.9.

milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are two ways to become involved in the Commission's review of this project: You can file comments on the project, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on December 8, 2020.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please submit your comments on or before December 8, 2020.

There are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number (CP21–4–000) in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address below.[2] Your written comments must reference the Project docket number (CP21–4–000).

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[3] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure[4] and the regulations under the NGA[5] by the intervention deadline for the project, which is December 8, 2020. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as the your interest in the proceeding. [For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene.] For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number (CP21–4–000) in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf.;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below.[6] Your motion to intervene must reference the Project docket number (CP21–4–000).

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Motions to intervene must be served on the applicant either by mail or email at: 1300 Main Street, Houston, Texas, 77002 or at *Kelly.Allen@energytransfer.com* . Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed[7] motions to intervene are automatically granted by operation of Rule 214(c)(1).[8] Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and

[2] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[3] 18 CFR 385.102(d).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[7] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[8] 18 CFR 385.214(c)(1).

provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[9] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Intervention Deadline: 5:00 p.m. Eastern Time on December 8, 2020.

Dated: October 23, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–24019 Filed 10–29–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC21–12–000

Applicants: ArcelorMittal S.A, ArcelorMittal USA LLC, ArcelorMittal Cleveland LLC, Cleveland-Cliffs Inc., AK Electric Supply LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of ArcelorMittal S.A., et al.

Filed Date: 10/23/20.

Accession Number: 20201023–5181.

Comments Due: 5 p.m. ET 11/13/20.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG21–13–000.

Applicants: Brunner Island, LLC.

Description: Notice of Self-Recertification of Exempt Wholesale Generator Status of Brunner Island, LLC.

Filed Date: 10/26/20.

Accession Number: 20201026–5060.

Comments Due: 5 p.m. ET 11/16/20.

Docket Numbers: EG21–14–000.

Applicants: Rancho Seco Solar, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Rancho Seco Solar, LLC.

Filed Date: 10/26/20.

Accession Number: 20201026–5114.

Comments Due: 5 p.m. ET 11/16/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–2761–001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 1628R18 Western Farmers Electric Cooperative NITSA NOA to be effective 8/1/2020.

Filed Date: 10/26/20.

Accession Number: 20201026–5111.

Comments Due: 5 p.m. ET 11/16/20.

Docket Numbers: ER20–2865–000; ER20–2866–000.

Applicants: 64NB 8me LLC, 91MC 8me, LLC.

Description: Supplement to September 11, 2020 64NB 8me LLC, et al. tariff filings, et al.

Filed Date: 10/22/20.

Accession Number: 20201022–5168.

Comments Due: 5 p.m. ET 10/30/20.

Docket Numbers: ER20–3003–000.

Applicants: PJM Interconnection, L.L.C.

Description: Notice of Cancellation of Interconnection Construction Service Agreement (No. 2277; Queue No. NQ25) of PJM Interconnection, L.L.C.

Filed Date: 9/25/20.

Accession Number: 20200925–5195.

Comments Due: 5 p.m. ET 11/2/20.

Docket Numbers: ER21–195–000.

Applicants: LS Power Grid California, LLC.

Description: Baseline eTariff Filing: LS Power Grid California Initial TO Tariff Filing to be effective 12/23/2020.

Filed Date: 10/23/20.

Accession Number: 20201023–5124.

Comments Due: 5 p.m. ET 11/13/20.

Docket Numbers: ER21–196–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2020–10–23 S-Line Entitlement Agreement to be effective 12/23/2020.

Filed Date: 10/23/20.

Accession Number: 20201023–5125.

Comments Due: 5 p.m. ET 11/13/20.

Docket Numbers: ER21–197–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: 2020–10–23_PSCo-NXER–PLGIA–610–0.0.0 to be effective 10/24/2020.

Filed Date: 10/23/20.

Accession Number: 20201023–5127.

Comments Due: 5 p.m. ET 11/13/20.

Docket Numbers: ER21–198–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2020–10–26_SA 3333 ITC–DTE Electric 1st Rev GIA (J793) to be effective 10/8/2020.

Filed Date: 10/26/20.

Accession Number: 20201026–5020.

Comments Due: 5 p.m. ET 11/16/20.

Docket Numbers: ER21–199–000.

Applicants: New York State Electric & Gas Corporation.

Description: § 205(d) Rate Filing: NYSEG–DCEC Attachment C Annual Update to be effective 1/1/2021.

Filed Date: 10/26/20.

Accession Number: 20201026–5048.

Comments Due: 5 p.m. ET 11/16/20.

Docket Numbers: ER21–200–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2020–10–26_MISO TO's Att O Revisions re Materials & Supplies to be effective 1/1/2021.

Filed Date: 10/26/20.

Accession Number: 20201026–5062.

Comments Due: 5 p.m. ET 11/16/20.

Docket Numbers: ER21–201–000.

Applicants: Atlantic City Electric Company, PJM Interconnection, L.L.C.

Description: Compliance filing: ACE submits Compliance Filing re: Order 864 to be effective N/A.

Filed Date: 10/26/20.

Accession Number: 20201026–5082.

Comments Due: 5 p.m. ET 11/16/20.

Docket Numbers: ER21–202–000.

Applicants: Centrica Business Solutions Optimize, LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 12/26/2020.

Filed Date: 10/26/20.

Accession Number: 20201026–5097.

Comments Due: 5 p.m. ET 11/16/20.

Docket Numbers: ER21–203–000.

Applicants: Baltimore Gas and Electric Company, PJM Interconnection, L.L.C.

Description: Compliance filing: BGE submits Compliance Filing re: Order 864 to be effective N/A.

[9] 18 CFR 385.214(b)(3) and (d).

Filed Date: 10/26/20.
Accession Number: 20201026–5098.
Comments Due: 5 p.m. ET 11/16/20.
Docket Numbers: ER21–204–000.
Applicants: Commonwealth Edison Company, PJM Interconnection, L.L.C.
Description: Compliance filing: ComEd Submits Compliance Filing Pursuant re: Order 864 to be effective N/A.
Filed Date: 10/26/20.
Accession Number: 20201026–5099.
Comments Due: 5 p.m. ET 11/16/20.
Docket Numbers: ER21–205–000.
Applicants: Delmarva Power & Light Company, PJM Interconnection, L.L.C.
Description: Compliance filing: Delmarva submits Compliance Filing re: Order 864 to be effective N/A.
Filed Date: 10/26/20.
Accession Number: 20201026–5100.
Comments Due: 5 p.m. ET 11/16/20.
Docket Numbers: ER21–206–000.
Applicants: Potomac Electric Power Company, PJM Interconnection, L.L.C.
Description: Compliance filing: PEPCO submits Compliance Filing re: Order 864 to be effective N/A.
Filed Date: 10/26/20.
Accession Number: 20201026–5102.
Comments Due: 5 p.m. ET 11/16/20.
Docket Numbers: ER21–207–000.
Applicants: Rancho Seco Solar, LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authority to be effective 11/1/2020.
Filed Date: 10/26/20.
Accession Number: 20201026–5109.
Comments Due: 5 p.m. ET 11/16/20.
Docket Numbers: ER21–208–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Tariff Cancellation: Notice of Cancellation of Rate Schedule FERC No. 240 to be effective 8/31/2020.
Filed Date: 10/26/20.
Accession Number: 20201026–5115.
Comments Due: 5 p.m. ET 11/16/20.
Docket Numbers: ER21–209–000.
Applicants: PECO Energy Company, PJM Interconnection, L.L.C.
Description: Compliance filing: PECO submits Compliance Filing re: Order 864 to be effective 1/27/2020.
Filed Date: 10/26/20.
Accession Number: 20201026–5116.
Comments Due: 5 p.m. ET 11/16/20.
Docket Numbers: ER21–210–000.
Applicants: Midcontinent Independent System Operator, Inc., American Transmission Company LLC.
Description: § 205(d) Rate Filing: 2020–10–26_SA 3327 Termination of ATC–WPSC PCA (Packaging) to be effective 12/26/2020.
Filed Date: 10/26/20.
Accession Number: 20201026–5117.
Comments Due: 5 p.m. ET 11/16/20.
Docket Numbers: ER21–211–000.
Applicants: Public Service Company of New Mexico.
Description: § 205(d) Rate Filing: Pseudo Tie Agreement with APS, Rate Schedule No. 302 to be effective 10/27/2020.
Filed Date: 10/26/20.
Accession Number: 20201026–5118.
Comments Due: 5 p.m. ET 11/16/20.
Docket Numbers: ER21–212–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Tariff Cancellation: Notice of Cancellation of Rate Schedule FERC No. 181 to be effective 2/26/2020.
Filed Date: 10/26/20.
Accession Number: 20201026–5121.
Comments Due: 5 p.m. ET 11/16/20.

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: October 26, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–24087 Filed 10–29–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–6233–005]

Hayes, Rejji P.; Notice of Filing

Take notice that on October 21, 2020, Rejji P. Hayes, submitted for filing, application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) (2018) and Part 45 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45.8 (2019).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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://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.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* 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.

Comment Date: 5:00 p.m. Eastern Time on November 12, 2020.

Dated: October 23, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–24018 Filed 10–29–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP21–23–001.
Applicants: Gulf South Pipeline Company, LLC.
Description: Tariff Amendment: Amendment to RP21–23–000 to be effective 10/1/2020.
Filed Date: 10/22/20.
Accession Number: 20201022–5120.
Comments Due: 5 p.m. ET 11/3/20.

Docket Numbers: RP21–80–000.
Applicants: Mississippi Canyon Gas Pipeline, L.L.C.
Description: § 4(d) Rate Filing: Mississippi Canyon LINK URL Conversion Filing to be effective 11/23/2020.
Filed Date: 10/22/20.
Accession Number: 20201022–5002.
Comments Due: 5 p.m. ET 11/3/20.

Docket Numbers: RP21–81–000.
Applicants: Nautilus Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Nautilus LINK URL Conversion Filing to be effective 11/23/2020.
Filed Date: 10/22/20.
Accession Number: 20201022–5011.
Comments Due: 5 p.m. ET 11/3/20.

Docket Numbers: RP21–82–000.
Applicants: NEXUS Gas Transmission, LLC.
Description: § 4(d) Rate Filing: NEXUS LINK URL Conversion Filing to be effective 11/23/2020.
Filed Date: 10/22/20.
Accession Number: 20201022–5013.
Comments Due: 5 p.m. ET 11/3/20.

Docket Numbers: RP21–83–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: TETLP LINK URL Conversion Filing to be effective 11/23/2020.
Filed Date: 10/22/20.
Accession Number: 20201022–5015.
Comments Due: 5 p.m. ET 11/3/20.

Docket Numbers: RP21–84–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Compliance filing 2020 Transco Penalty Revenue Sharing Report.
Filed Date: 10/22/20.
Accession Number: 20201022–5028.
Comments Due: 5 p.m. ET 11/3/20.

Docket Numbers: RP21–85–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 102220 Negotiated Rates—Vitol Inc. R–7495–07 to be effective 11/1/2020.
Filed Date: 10/22/20.
Accession Number: 20201022–5042.
Comments Due: 5 p.m. ET 11/3/20.

Docket Numbers: RP21–86–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 102220 Negotiated Rates—Vitol Inc. R–7495–08 to be effective 11/1/2020.
Filed Date: 10/22/20.
Accession Number: 20201022–5039.
Comments Due: 5 p.m. ET 11/3/20.

Docket Numbers: RP21–87–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 102220 Negotiated Rates—Vitol Inc. R–7495–09 to be effective 11/1/2020.
Filed Date: 10/22/20.
Accession Number: 20201022–5043.
Comments Due: 5 p.m. ET 11/3/20.

Docket Numbers: RP21–88–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 102220 Negotiated Rates—Vitol Inc. R–7495–10 to be effective 11/1/2020.
Filed Date: 10/22/20.
Accession Number: 20201022–5044.
Comments Due: 5 p.m. ET 11/3/20.

Docket Numbers: RP21–89–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Amendment to a Negotiated Rate Agreement-Macquarie Energy to be effective 10/22/2020.
Filed Date: 10/22/20.
Accession Number: 20201022–5063.
Comments Due: 5 p.m. ET 11/3/20.

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: October 23, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–24017 Filed 10–29–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL21–12–000]

Voltus, Inc. v. Midcontinent Independent System Operator, Inc.; Notice of Complaint

Take notice that on October 20, 2020, pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e, 825e and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, Voltus, Inc. (Complainant) filed a formal complaint against Midcontinent Independent System Operator, Inc. (MISO or Respondent) requesting that the Commission find that MISO tariff provisions authorizing states to bar third party demand response providers from participating in MISO's wholesale market are inconsistent with the jurisdictional provisions of the Federal Power Act, and are unjust, unreasonable, unduly discriminatory and preferential, all as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on the contacts for MISO, as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* 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://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.

Comment Date: 5:00 p.m. Eastern Time on November 9, 2020.

Dated: October 23, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–24016 Filed 10–29–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–1959–003.

Applicants: Avista Corporation.

Description: Compliance filing: Avista Corp Amendment to Order 845/854A Compliance Filing to be effective 10/17/2020.

Filed Date: 10/23/20.

Accession Number: 20201023–5061.

Comments Due: 5 p.m. ET 11/13/20.

Docket Numbers: ER19–2621–001; ER19–665–001; ER19–666–001; ER19–667–002; ER19–669–002.

Applicants: FirstLight Power Management LLC, FirstLight CT Housatonic LLC, FirstLight CT Hydro LLC, FirstLight MA Hydro LLC, Northfield Mountain LLC.

Description: Supplement to June 30, 2020 Updated Market Power Analysis for the Northeast Region of FirstLight Power Management LLC, et al.

Filed Date: 10/21/20.

Accession Number: 20201021–5161.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: ER19–2722–002.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing: Errata to Pending PJM Fast-Start Compliance Filing to be effective 12/31/9998.

Filed Date: 10/22/20.

Accession Number: 20201022–5136.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: ER20–2820–001.

Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.

Description: Tariff Amendment: ATSI submits Amended ECSAs, SA Nos. 5703 and 5704 to be effective 11/4/2020.

Filed Date: 10/23/20.

Accession Number: 20201023–5092.

Comments Due: 5 p.m. ET 11/13/20.

Docket Numbers: ER21–109–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Correction to Amendment to WMPA, SA No. 4768; Queue No. AC1–117 (consent) to be effective 8/4/2017.

Filed Date: 10/23/20.

Accession Number: 20201023–5075.

Comments Due: 5 p.m. ET 11/13/20.

Docket Numbers: ER21–172–000.

Applicants: Public Service Company of New Mexico.

Description: § 205(d) Rate Filing: Assignment of Incremental Transmission Service Agreements to be effective 11/20/2020.

Filed Date: 10/21/20.

Accession Number: 20201021–5117.

Comments Due: 5 p.m. ET 11/2/20.

Docket Numbers: ER21–187–000.

Applicants: Duke Energy Florida, LLC.

Description: § 205(d) Rate Filing: DEF-Mount Dora Amended NITSA SA–151 to be effective 1/1/2021.

Filed Date: 10/22/20.

Accession Number: 20201022–5113.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: ER21–188–000.

Applicants: Tampa Electric Company.

Description: § 205(d) Rate Filing: Provisional Interconnection Service under SGIP_SGIA to be effective 11/1/2020.

Filed Date: 10/22/20.

Accession Number: 20201022–5132.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: ER21–189–000.

Applicants: Alabama Power Company.

Description: Tariff Cancellation: Core Solar SPV XX LGIA Termination Filing to be effective 10/23/2020.

Filed Date: 10/23/20.

Accession Number: 20201023–5037.

Comments Due: 5 p.m. ET 11/13/20.

Docket Numbers: ER21–190–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2020–10–23 Excess Behind the Meter Production to be effective 1/1/2021.

Filed Date: 10/23/20.

Accession Number: 20201023–5043.

Comments Due: 5 p.m. ET 11/13/20.

Docket Numbers: ER21–191–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Service Agreement No. 888 between Tri-State and the BOR to be effective 10/20/2020.

Filed Date: 10/23/20.

Accession Number: 20201023–5045.

Comments Due: 5 p.m. ET 11/13/20.

Docket Numbers: ER21–192–000.

Applicants: NSTAR Electric Company.

Description: § 205(d) Rate Filing: Preliminary Engineering and Design Agreement with Ocean State Power to be effective 10/23/2020.

Filed Date: 10/23/20.

Accession Number: 20201023–5048.

Comments Due: 5 p.m. ET 11/13/20.

Docket Numbers: ER21–193–000.

Applicants: New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 205 filing re: unsecured credit requirements tariff revisions to be effective 12/23/2020.

Filed Date: 10/23/20.

Accession Number: 20201023–5058.

Comments Due: 5 p.m. ET 11/13/20.

Docket Numbers: ER21–194–000.

Applicants: Southern California Edison Company.

Description: Tariff Cancellation: Notice of Cancellation of IFA Oasis Power Partners, LLC SA No. 25 to be effective 10/12/2020.

Filed Date: 10/23/20.

Accession Number: 20201023–5072.

Comments Due: 5 p.m. ET 11/13/20.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH21–1–000.

Applicants: South Jersey Industries, Inc.

Description: South Jersey Industries, Inc. submits FERC 65–A Amended Exemption Notification.

Filed Date: 10/21/20.

Accession Number: 20201021–5177.

Comments Due: 5 p.m. ET 11/12/20.

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: October 23, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–24024 Filed 10–29–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2487–048]

Hydro Power, Inc., Albany Engineering Corporation; Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On September 22, 2020, Hydro Power, Inc. (transferor) and Albany Engineering Corporation (transferee) filed a joint application for the transfer of license of the Hoosick Falls Hydroelectric Project No. 2487. The project is located on the Hoosick Falls, Rensselaer County, New York.

The applicants seek Commission approval to transfer the license for the Hoosick Falls Hydroelectric Project from the transferor to the transferee.

Applicants Contact: For transferor and transferee: Mr. James A. Besha, P.E., Albany Engineering Corporation, 5 Washington Square, Albany, NY 12205, Phone: (518) 456–7712 Ext. 402, Fax: (518) 456–8451, Email: *jim@albanyengineering.com.*

FERC Contact: Anumzziatta Purchiaroni, (202) 502–6191, *anumzziatta.purchiaroni@ferc.gov.*

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

In lieu of electronic filing, you may submit a paper copy. Submissions sent via U.S. Postal Service must be addressed to, Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to, Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2487–048. Comments emailed to Commission staff are not considered part of the Commission record.

Dated: October 26, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–24100 Filed 10–29–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0346; FRL—10016–44–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Area Sources: Acrylic and Modacrylic Fibers Production, Carbon Black Production, Chemical Manufacturing: Chromium Compounds, Flexible Polyurethane Foam Production and Fabrication, Lead Acid Battery Manufacturing, and Wood Preserving (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Area Sources: Acrylic and Modacrylic Fibers Production, Carbon Black Production, Chemical Manufacturing: Chromium Compounds, Flexible Polyurethane Foam Production and Fabrication, Lead Acid Battery Manufacturing, and Wood Preserving (EPA ICR Number 2256.06, OMB Control Number 2060–0598), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through December 31, 2020. Public comments were previously requested, via the **Federal Register**, on May 12, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted either on or before November 30, 2020.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0346,, online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* 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: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov,* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional

information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: EPA established NESHAP for seven area source categories. The requirements for two area source categories (Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication) are combined in one Subpart. These standards include emissions limitations and work practice requirements for new and existing plants based on the *generally-available* control technology or management practices (GACT) for each area source category. Potential respondents include two existing acrylic and modacrylic production facility, one existing carbon black production plant, two existing chromium product manufacturing facilities, 500 existing flexible polyurethane foam production and fabrication facilities, 41 existing lead acid battery manufacturing facilities, and 393 existing wood preserving facilities. The total annual responses attributable to this ICR for existing sources are two one-time notifications; some existing facilities may be required to prepare a startup, shutdown, and malfunction plan, perform additional monitoring and recordkeeping, and/or conduct an initial performance test. The owner or operator of a new area source would be required to comply with all requirements of the General Provisions (40 CFR part 63, subpart A).

Form Numbers: None.

Respondents/affected entities: Acrylic and modacrylic fibers production, carbon black production, chemical manufacturing: chromium compounds, flexible polyurethane foam production and fabrication, lead acid battery manufacturing, and wood preserving facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subparts LLLLLL, MMMMMM, NNNNNN, OOOOOO, PPPPPP, and QQQQQQ).

Estimated number of respondents: 939 (total).

Frequency of response: Initially, semiannually, and occasionally.

Total estimated burden: 5,730 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $671,000 (per year), which includes no annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is a decrease in burden from the most-recently approved ICR due to an adjustment. The decrease is due to a decrease in the number of sources as a result of data gathered as part of recent rulemaking efforts related to 40 CFR 63, Subpart PPPPPP, NESHAP for Lead Acid Battery Manufacturing Area Sources. Additionally, we have adjusted the number of respondents for 40 CFR 63, Subpart LLLLLL and 40 CFR 63, Subpart MMMMMM to each reflect one additional source. This change is based on our review of facilities with EIS IDs reporting under Subparts LLLLLL and MMMMMM in the EPA's ECHO database. The overall result is a decrease in the number of respondents and the burden hours.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2020–24130 Filed 10–29–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10016–27–OA]

Notification of Public Meetings of the Science Advisory Board Radiation Advisory Committee Augmented for the Review of Revision 2 of the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) (Draft for Public Comment)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces two meetings of the Radiation Advisory Committee (RAC) Augmented for the Review of Revision 2 of the Multi-Agency Radiation Survey and Site Investigation Manual (Draft for Public Comment) (MARSSIM). A public teleconference will be held as a preparatory meeting for the RAC-augmented MARSSIM Panel to receive an Agency briefing, review charge questions, and to hear public comments on Revision 2 of MARSSIM (Draft for Public Comment). This will be followed by a virtual public meeting for the Panel to peer review Revision 2 of MARSSIM (Draft for Public Comment).

DATES: The public teleconference will be held on Thursday, December 3, 2020, from 1:00 p.m. to 5:00 p.m. (Eastern Standard Time). The public meeting will be held remotely via webcast and teleconference on January 11–14, 2021 (Monday–Thursday), from 12:00 p.m. to 5:00 p.m. (Eastern Standard Time).

ADDRESSES: The public teleconference will be held by telephone only. The public virtual meeting will be conducted via webcast and teleconference.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding these meetings may contact Dr. Diana Wong, Designated Federal Officer (DFO), SAB Staff Office, via email at *wong.diana-M@epa.gov.* General information concerning the EPA Science Advisory Board can be found at the EPA SAB website at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDAA) codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the SAB RAC—augmented MARSSIM Panel will hold a public teleconference and a public virtual peer review meeting. The purpose of the teleconference is for the Panel to receive an Agency briefing, review charge questions, and to hear public comments on Revision 2 of the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) (Draft for Public Comment). The purpose of the public virtual review meeting is for the Panel to conduct a peer review on Revision 2 of MARSSIM (Draft for Public Comment). This SAB panel will provide advice to the Administrator through the chartered SAB.

Background: EPA's Office of Air and Radiation (OAR) requested that the SAB conduct a peer review on Revision 2 of Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) (Draft for Public Comment). MARSSIM was originally developed by the technical staffs of the four Federal agencies having authority for control of radioactive materials: DoD, DOE, EPA, and NRC (60 FR 12555; March 7, 1995). The four agencies issued Revision 1 to MARSSIM in August 2000, and additional edits to Revision 1 in June 2001. MARSSIM has not been updated since 2001; updates prior to 2001 primarily consisted of minor non-technical edits. Revision 2 updates the science, clarifies methods, and implements lessons learned from over 20 years of the document's use in industry.

MARSSIM provides information on planning, conducting, evaluating, and documenting environmental radiological surveys of surface soil and building surfaces for demonstrating

compliance with regulations. MARSSIM, when finalized as Revision 2, will update this multi-agency consensus document. The EPA SAB Staff Office augmented the SAB RAC with subject matter experts to provide advice through the chartered SAB regarding this document.

Technical Contacts: Any technical questions concerning Revision 2 of Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) (Draft for Public Comment) should be directed to Kathryn Snead of the U.S. EPA, Office of Radiation and Indoor Air, by email at *snead.kathryn@epa.gov.*

Availability of Meeting Materials: Prior to the meeting, the agenda and other materials will be accessible through the calendar link on the blue navigation bar at *http://www.epa.gov/sab/.* Materials may also be accessed at the following SAB web page: *https://yosemite.epa.gov/sab/sabproduct.nsf//LookupWebProjectsCurrentBOARD/E1D35FEB397932FF8525854D00836CFA?OpenDocument.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Interested members of the public may submit relevant information on the topic of this advisory activity, for the group conducting the activity, for the SAB to consider during the advisory process. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for SAB committees and panels to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the DFO directly.

Oral Statements: In general, individuals or groups requesting an oral presentation on a public teleconference will be limited to three minutes and an oral presentation at the virtual public review meeting will be limited to five minutes. Interested parties wishing to provide comments should contact Dr. Diana Wong, DFO via email, at the contact information noted above, by November 25, 2020, to be placed on the list of registered speakers for the teleconference and by January 4, 2021, to be placed on the list of registered speakers for the peer review meeting.

Written Statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by Committee/Panel members, statements should be supplied to the DFO via email at the contact information noted above by January 4, 2021, so that the information may be made available to the SAB Panel for their consideration. It is the SAB Staff Office general policy to post written comments on the web page for the advisory meeting or teleconference. Submitters are requested to provide a signed and unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its websites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Diana Wong at *wong.diana-M@epa.gov.* To request accommodation of a disability, please contact Dr. Wong preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: October 22, 2020.

V. Khanna Johnson,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2020–24093 Filed 10–29–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9053–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed October 19, 2020 10 a.m. EST Through October 26, 2020 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20200209, Final, BIA, MI, Little River Band of Ottawa Indians, Michigan Trust Acquisition and Casino Project, *Review Period Ends:* 11/30/2020, *Contact:* Scott Doig 612–725–4514.

EIS No. 20200210, Draft, STB, UT, Uinta Basin Railway, *Comment Period Ends:* 12/14/2020, *Contact:* Joshua Wayland 202–245–0330.

EIS No. 20200211, Draft, MDA, AK, Long Range Discrimination Radar Operations, Clear Air Force Station, Alaska, *Comment Period Ends:* 12/21/2020, *Contact:* Ryan Keith 256–450–1599.

EIS No. 20200212, Third Draft Supplemental, USFS, AK, Kensington Gold Mine Plan of Operations Amendment 1, *Comment Period Ends:* 12/14/2020, *Contact:* Matthew Reece 907–789–6274.

EIS No. 20200213, Final, FHWA, WI, South Bridge Connector, Brown County, Wisconsin, Tier I, *Contact:* Ian Chidister 608–829–7503.

Pursuant to 23 U.S.C. 139(n)(2), FHWA has issued a single document that consists of a final environmental impact statement and record of decision. Therefore, the 30-day wait/review period under NEPA does not apply to this action.

EIS No. 20200214, Draft, FHWA, SC, Interstate 526 Lowcountry Corridor West, *Comment Period Ends:* 01/15/2021, *Contact:* Jeffrey (Shane) Belcher 803–253–3187.

EIS No. 20200215, Draft, USFS, OR, Stella Restoration Project, *Comment Period Ends:* 12/14/2020, *Contact:* Elizabeth Bly 541–560–3465.

EIS No. 20200216, Draft, NPS, FL, Big Cypress National Preserve Backcountry Access Plan, *Comment Period Ends:* 12/15/2020, *Contact:* Joshua Boles 561–492–7340.

EIS No. 20200217, Draft, USACE, TX, Coastal Texas Protection and Restoration Feasibility Study, *Comment Period Ends:* 12/14/2020, *Contact:* Jeff Pinsky 409–766–3039.

Amended Notice

EIS No. 20200198, Final, TxDOT, TX, North Houston Highway Improvement Project, *Review Period Ends:* 12/09/2020, *Contact:* Carlos Swonke 512–416–2734.

Revision to FR Notice Published 10/9/2020; Extending the Comment Period from 11/9/2020 to 12/9/2020.

Dated: October 26, 2020.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2020–24059 Filed 10–29–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2010–0757; FRL–10016–01–OMS]

Proposed Information Collection Request; Comment Request; Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency (Renewal); EPA ICR No. 2260.06, OMB Control No. 2090–0029

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency (Renewal)'' (EPA ICR No. 2260.05, OMB Control No. 2090–0029) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through June 30, 2021. An Agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before December 31, 2020.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OA–2010–0757, online using *www.regulations.gov* (our preferred method), by email to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Toni Rousey, Office of Resources, and Business Operations, Federal Advisory Committee Management Division, Mail Code 1601M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–5356; fax number: 202–564–8129; email address: *rousey.toni@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The purpose of this information collection request is to assist the EPA in selecting federal advisory committee members who will be appointed as Special Government Employees (SGEs), mostly to the EPA's scientific and technical committees. To select SGE members as efficiently and cost effectively as possible, the Agency needs to evaluate potential conflicts of interest before a candidate is hired as an SGE and appointed as a member to a committee.

Agency officials developed the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency,'' also referred to as Form 3110–48, for greater inclusion of information to discover any potential conflicts of interest as recommended by the Government Accountability Office.

Form numbers: EPA Form 3110–48.

Respondents/affected entities: Entities potentially affected by this action are approximately 250 candidates for membership as SGEs on EPA federal advisory committees. SGEs are required to file a confidential financial disclosure report (Form 3110–48) when first appointed to serve on EPA advisory committees, and then annually thereafter. Committee members may also be required to update the confidential form before each meeting while they serve as SGEs.

Respondent's obligation to respond: Required in order to serve as a SGE on an EPA federal advisory committee (5 CFR 2634.903).

Estimated number of respondents: 250 (total).

Frequency of response: When first appointed to serve on an EPA advisory committee and annually thereafter. Committee members may also be required to update the confidential form before each meeting while they serve as SGEs.

Total estimated burden: 250 hours per year (1 hour per respondent). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $22,000 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in estimates: We anticipate an increase in the total estimated respondent burden compared with the ICR currently approved by OMB. The estimated number of respondents needs to be revised to consider several committees and subcommittees with SGEs that were established since the ICR was last renewed, as well as SGEs who serve as consultants to the committees on an ad-hoc basis.

Donna J. Vizian,

Principle Deputy Assistant Administrator, Office of Mission Support.

[FR Doc. 2020–23876 Filed 10–29–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0478, FRL–10016–43–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Regulation of Fuels and Fuel Additives: Gasoline Volatility (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Regulation of Fuels and Fuel Additives: Gasoline Volatility (EPA ICR Number 1367.13, OMB Control Number 2060–0178) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). This is a proposed extension of the ICR, which is currently approved through December 31, 2020. Public comments were previously requested via the **Federal Register** on April 1, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before November 30, 2020.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2007–0478, online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* 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: James W. Caldwell, Compliance Division, Office of Transportation and Air Quality, Mail Code 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 343–9303; fax number: (202) 343–2801; email address: *caldwell.jim@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: Gasoline volatility, as measured by Reid Vapor Pressure (RVP) in pounds per square inch (psi), is controlled in the spring and summer in order to minimize evaporative hydrocarbon emissions from motor vehicles. RVP is subject to a Federal standard of 7.8 psi or 9.0 psi, depending on location. The addition of ethanol to gasoline increases the RVP by about 1 psi. Gasoline that contains nine volume percent to 15 volume percent ethanol is subject to a standard that is 1.0 psi greater. As an aid to industry compliance and EPA enforcement, the product transfer document (PTD), which is prepared by the producer or importer and which accompanies a shipment of gasoline containing ethanol, is required by regulation to contain a legible and conspicuous statement that the gasoline contains ethanol and the percentage concentration of ethanol. This is intended to deter the mixing within the distribution system, particularly in retail storage tanks, of gasoline which contains ethanol in the nine to 15 percent range with gasoline which does not contain ethanol in that range. Such mixing would likely result in a gasoline which is in violation of its RVP standard. Also, a party wishing a testing exemption, for research on gasoline that is not in compliance with the applicable volatility standard, must submit certain information to EPA. EPA has additional PTD requirements for gasoline containing ethanol at 40 CFR 80.1503. Those requirements are covered in a separate ICR.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this action are those who produce or import gasoline containing ethanol, or who wish to obtain a testing exemption.

Respondent's obligation to respond: Mandatory per 40 CFR 80.27(d) and (e).

Estimated number of respondents: 2,200 (total).

Frequency of response: On occasion.

Total estimated burden: 1,410 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $154,030, includes $10 annualized capital or operation & maintenance costs.

Changes in estimates: With nearly all PTDs now being computer generated, the average time to include the regulatory language on each PTD has decreased from one second to 0.1 second. As a result, the total annual burden has decreased from 12,330 hours per year to 1,410 hours per year.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2020–24129 Filed 10–29–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2018–0604; FRL–10015–96]

C.I. Pigment Violet 29; Revised Draft Toxic Substances Control Act (TSCA) Risk Evaluation; Notice of Availability, Letter Peer Review and Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of and soliciting public comment on a revised draft risk evaluation of C. I. Pigment Violent 29 under the Toxic Substances Control Act (TSCA). EPA conducts risk evaluations to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment without consideration of costs or other nonrisk factors, including an unreasonable risk to potentially exposed or susceptible subpopulations, under the conditions of use. The draft risk evaluation has been revised to include information EPA received from the manufacturing stakeholders as a result of a TSCA section 4 order requiring testing of the chemical substance. EPA is announcing the opening of a docket for a 30-day comment period to allow the public to review the revised draft in-light of the additional information.

Concurrently with the public comment, EPA is announcing the availability of the risk evaluation for expert letter peer review.

DATES: Comments must be received on or before November 30, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA- EPA–HQ–OPPT–2018–0604, using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Seema Schappelle, Risk Assessment Division, Office of Pollution Prevention and Toxics (7403M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8006; email address: *schappelle.seema@epa.gov.*

For peer review information contact: Dr. Todd Peterson, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–6428; email address: *peterson.todd@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What action is the Agency taking?

Subsequent to the publication of the C.I. Pigment Violet 29 Draft Risk Evaluation, EPA obtained additional information, including but not limited to information submitted in response to a TSCA section 4 testing order. This additional information triggered revised analyses and the selection of a different analogue for adverse health effects outcome and dose response. This new information has been placed in the public docket. EPA seeks public comment on the Agency's interpretation and use of the information and its revised calculations. Therefore, EPA is providing 30 days public notice and an opportunity for comment on this revised draft risk evaluation prior to publishing a final risk evaluation (see Unit III.). EPA is also initiating a letter peer review of this revised draft risk evaluation concurrently with the public comment period (see Unit IV.).

B. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to those involved in the manufacture, processing, distribution, use, disposal, and/or the assessment of risks involving chemical substances and mixtures. You may be potentially affected by this action if you manufacture (defined under TSCA to include import), process, distribute in commerce, use or dispose of C.I. Pigment Violet 29. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities and corresponding NAICS codes for entities that may be interested in or affected by this action.

C. What is the Agency's authority for taking this action?

TSCA section 6(b) requires that EPA conduct risk evaluations on existing chemical substances and identifies the minimum components EPA must include in all chemical substance risk evaluations. 15 U.S.C. 2605(b). The risk evaluation must not consider costs or other nonrisk factors. 15 U.S.C. 2605(b)(4)(F)(iii). The specific risk evaluation process is set out in 40 CFR part 702 and summarized on EPA's website at *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-evaluations-existing-chemicals-under-tsca.*

D. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI information to EPA through *regulations.gov* or email. If your comments contain any information that you consider to be CBI or otherwise protected, please contact Seema Schappelle listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Background

A. What is EPA's risk evaluation process for existing chemicals under TSCA?

The risk evaluation process is the second step in EPA's existing chemical process under TSCA, following prioritization and before risk management. As this chemical is one of the first ten chemical substances undergoing risk evaluation, the chemical substance was not required to go through prioritization (81 FR 91927, December 19, 2016) (FRL–9956–47). The purpose of conducting risk evaluations is to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment under the conditions of use, including an unreasonable risk to a relevant potentially exposed or susceptible subpopulation. As part of this process, EPA must evaluate both hazard and exposure, not consider costs or other nonrisk factors, use reasonably available information and approaches in a manner that is consistent with the requirements in TSCA for the use of the best available science, and ensure decisions are based on the weight of the scientific evidence.

The specific risk evaluation process that EPA has established by rule to implement the statutory process is set out in 40 CFR part 702 and summarized on EPA's website at *http://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-evaluations-existing-chemicals-under-tsca.* As explained in the preamble to EPA's final rule on procedures for risk evaluation (82 FR 33726, July 20, 2017) (FRL–9964–38), the specific regulatory process set out in 40 CFR part 702, subpart B will be followed for the first ten chemical substances undergoing risk evaluation to the maximum extent practicable.

In November 2018, EPA published a draft risk evaluation, which was subject to peer review and public comment. EPA reviewed the peer review report from the Science Advisory Committee on Chemicals (SACC) and public comments, and has revised the risk evaluation in response to these comments as appropriate. The public comments, peer review report, and EPA's draft response are in Docket EPA–HQ–OPPT–2018–0604 at *www.regulations.gov.* Prior to the publication of the draft risk evaluation, EPA made available the scope and problem formulation, and solicited public input on uses and exposure. EPA's documents and the public comments are in Docket EPA–HQ–OPPT–2016–0725. Additionally, information about the scope, problem

formulation, and draft risk evaluation phases of the TSCA risk evaluation for this chemical is available at *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-evaluation-pigment-violet-29-anthra219-def6510*

B. What is C.I. Pigment Violet 29?

C.I. Pigment Violet 29 (Anthra[2,1,9-def:6,5,10-d'e'f'] diisoquinoline-1,3,8,10(2H,9H)-tetrone) is a perylene derivative used to color materials and as an intermediate for other perylene pigments. C.I. Pigment Violet 29 is currently manufactured (including imported), processed, distributed, used, and disposed of as part of industrial, commercial, and consumer conditions of use. Leading applications for C.I. Pigment Violet 29 include use as an intermediate to create or adjust color of other perylene pigments, incorporation into paints and coatings used primarily in the automobile industry, incorporation into plastic and rubber products used primarily in automobiles and industrial carpeting, use in merchant ink for commercial printing, and use in consumer watercolors and artistic color.

C. What additional information has been gathered?

In the draft risk evaluation for C.I. Pigment Violet 29, published in November 2018, EPA preliminarily concluded C.I. Pigment Violet 29 does not present an unreasonable risk of injury to human health or the environment. During the peer review of the draft risk evaluation, members of the SACC highlighted uncertainties in the draft evaluation, specifically concerning C.I. Pigment Violet 29's solubility and occupational worker inhalation exposure.

In response to the SACC comments, in February 2020, EPA issued a TSCA section 4(a)(2) order to two companies, a manufacturer and an importer of C.I. Pigment Violet 29, requiring the development of information necessary to decrease uncertainty in the risk evaluation. The tests ordered by EPA were tailored to address critical uncertainties highlighted by SACC and public comments and were capable of being conducted in a relatively short time period. Section 4 of TSCA authorizes EPA to issue rules, orders, or consent agreements to require the development of new information that is necessary to, among other things, perform a risk evaluation under TSCA section 6(b) or prioritize a chemical substance under TSCA section 6(b) (subject to certain limitations). The EPA test orders required laboratory tests confirming the solubility of C.I. Pigment Violet 29. The other test order required worker respirable dust monitoring of C.I. Pigment Violet 29 in the manufacturing facility. This information has been received and incorporated into the revised draft risk evaluation.

The test order information combined with additional particle size information received from the manufacturers had a significant impact on EPA's analysis of the potential exposure and health effects of PV29. As a result of this updated analysis, the revised draft risk evaluation now shows unreasonable risk for 8 out of 14 conditions of use. Because this important new data had a significant impact on EPA's risk evaluation and ultimately the risk determinations, the Agency feels it is important that the public have the opportunity to provide input on this new information and analysis before the risk evaluation is finalized.

III. Request for Comment

The docket associated with this request contains the Revised Draft Risk Evaluation, a document that responds to comment received from both the public and peer reviewers on the Draft Risk Evaluation, the SACC Peer Review Report, supplemental files to support the Revised Draft Risk Evaluation, and Charge Questions for the letter peer review.

EPA is seeking public comment on, and information relevant to, the revised draft risk evaluation; in particular, commenters are encouraged to provide comment in-light-of the charge questions supplied to the peer reviewers.

IV. Letter Peer Review

The inclusion of the additional test ordered scientific information resulted in significant changes to the evaluation, including assumptions and models, and ultimately resulted in changes to EPA's risk characterization for this chemical substance. EPA feels it is important that independent, scientific experts have the opportunity to provide input on this new information and analysis before the risk evaluation is finalized, and EPA will conduct an independent expert peer review in the form of a letter peer review simultaneous to the period of solicitation for public comment. Peer reviewers will be provided the identical information made available to the public and will be asked to review the revised draft risk evaluation in-light-of the charge questions posted in the same docket. EPA will consider public and peer review comments as it finalizes the risk evaluation.

Authority: 15 U.S.C. 2601 *et seq.*

Andrew Wheeler,

Administrator.

[FR Doc. 2020–24032 Filed 10–29–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2020–0262; FRL–10013–38–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Asbestos Abatement Worker Protection (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Asbestos Abatement Worker Protection (EPA ICR Number 1246.14, OMB Control Number 2070–0072) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through December 31, 2020. Public comments were previously requested via the **Federal Register** on May 20, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before November 30, 2020.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OPPT–2020–0262 to EPA online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the

proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* 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: Sarah Cox, National Program Chemicals Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–3961; email address: *cox.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The 2000 Asbestos Worker Protection Rule (40 CFR part 763, subpart G) (hereafter referred to as the ''2000 WPR,'' or simply ''WPR'') establishes workplace standards for the protection of state and local government employees who work with asbestos and who are not covered by a state plan approved by the Occupational Safety and Health Administration (OSHA). Currently, state and local government employees in 24 states, the District of Columbia (DC), and three additional U.S. territories (DC and the territories are counted as one ''state equivalent'') who perform construction work, including building construction, renovation, demolition, and maintenance activities, and employees who perform brake and clutch repair work, are covered by EPA's WPR. The WPR incorporates, by reference, the OSHA Construction Industry Standard for Asbestos (29 CFR part 1926.1101) and the General Industry Standard for Asbestos (29 CFR part 1910.1001). As a result, the WPR requires state and local government employers to use engineering controls and appropriate work practices to control the release of asbestos fibers. Covered employers must monitor employee exposure to asbestos and provide employees with personal protective equipment, training, and medical surveillance to reduce the risk of asbestos exposure. Exposure monitoring records must be maintained for 30 years, medical surveillance records for the duration of employment of the affected employees plus 30 years, and training records for the duration of employment plus one year. Employers must also establish written respiratory protection programs and maintain procedures and records of respirator fit tests for one year.

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

Form Numbers: None.

Respondents/Affected Entities: States and local government employers in the 24 states, DC, and the U.S. territories of American Samoa, Guam, and the Northern Mariana Islands that have employees engaged in asbestos-related construction, custodial, and brake and clutch repair activities without OSHA-approved state plans.

Respondent's obligation to respond: Mandatory (40 CFR 763 Subpart G)

Estimated number of respondents: 23,437 (total).

Frequency of response: On occasion.

Total estimated burden: 372,969 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $16,894,178 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the estimates: There is no change in the burden hours compared with the ICR currently approved by OMB.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2020–24127 Filed 10–29–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2020–0212; FRL–10016–48–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; National Emission Standards for Hazardous Air Pollutants for Nutritional Yeast Manufacturing Residual Risk and Technology Review (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), National Emission Standards for Hazardous Air Pollutants (NESHAP) for Nutritional Yeast Manufacturing Residual Risk and Technology Review (EPA ICR Number 2568.03, OMB Control Number 2060–0719) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through December 31, 2020. Public comments were previously requested via the **Federal Register** on May 12, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before November 30, 2020.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2020–0212, online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* 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: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the

EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: This supporting statement addresses information collection activities that will be imposed by amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) from Manufacturing of Nutritional Yeast, 40 CFR part 63, subpart CCCC, referred to in this document as the Nutritional Yeast NESHAP. This rule applies to facilities where the total hazardous air pollutants (HAP) emitted are greater than or equal to 10 tons per year of any single HAP, or where the total HAP emitted are greater than or equal to 25 tons per year of any combination of HAP. Owners or operators of the affected facilities must submit initial notifications, performance tests and performance evaluation reports, and periodic reports and results. Owners or operators are also required to maintain records of performance tests and performance evaluations, monitoring, and any failure to meet a standard. These reports are used by EPA to determine compliance with the standards.

Form Numbers: None.

Respondents/affected entities: Nutritional yeast manufacturing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart CCCC).

Estimated number of respondents: 4 (total).

Frequency of response: Semiannual.

Total estimated burden: 1,410 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $941,000 (per year), includes $776,000 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an increase in burden from the most recently approved ICR due to an adjustment. The change in the burden and cost estimates occurred because the standard has been in effect for more than three years and the requirements are different during initial compliance as compared to on-going compliance. The previous ICR reflected those burdens and costs associated with the initial activities for subject facilities following the October 1, 2017 final rule amendments. This includes purchasing monitoring equipment, conducting performance tests, and establishing recordkeeping systems. This ICR removes costs associated with initial compliance, including capital costs. This ICR instead reflects the on-going burden and costs for existing facilities. The adjustment increase in burden is due to an adjustment to the number of facilities conducting performance evaluations to reflect an annual average basis. This ICR reflects the burden for four facilities to conduct a performance evaluation at least once every twelve calendar quarters or three years. Finally, this ICR more accurately reflects the average hours per response, based on the total burden hours divided by the total number of responses submitted by respondents. The previous ICR incorrectly allocated the total burden hours divided by the total number of respondents.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2020–24131 Filed 10–29–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2011–0901; FRL –10016–35–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Prevention of Significant Deterioration and Nonattainment New Source Review (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Prevention of Significant Deterioration and Nonattainment New Source Review (EPA ICR Number 1230.33, OMB Control Number 2060–0003) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through October 31, 2020. Public comments were previously requested via the **Federal Register** on February 14, 2020, during a 60-day comment period. This notice allows for 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before November 30, 2020.

ADDRESSES: You may submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0901, online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* 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: Ben Garwood, Air Quality Policy Division, Office of Air Quality Planning and Standards, C504–03, U.S. Environmental Protection Agency, Research Triangle Park, NC 27709; telephone number: (919) 541–1358; fax number: (919) 541–4028; email address: *garwood.ben@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov.* The telephone number for the Docket Center is 202–566–1744. For additional information about the EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: Title I, part C of the Clean Air Act (CAA or the Act)—''Prevention of Significant Deterioration,'' and part D—''Plan Requirements for Nonattainment Areas,'' require all states to adopt preconstruction review programs for new or modified stationary sources of air pollution. In addition, the provisions of section 110 of the Act include a requirement for states to have a preconstruction review program to manage the emissions from the construction and modification of any stationary source of air pollution to assure that the National Ambient Air Quality Standards are achieved and maintained. Tribes may choose to

develop implementation plans to address these requirements.

Implementing regulations for these three programs are promulgated at 40 CFR 49.101 through 49.105; 40 CFR 49.151 through 49.173; 40 CFR 51.160 through 51.166; 40 CFR part 51, Appendix S; and 40 CFR 52.21 and 52.24. In order to receive a construction permit for a major new source or major modification, the applicant must conduct the necessary research, perform the appropriate analyses, and prepare the permit application with documentation to demonstrate that their project meets all applicable statutory and regulatory NSR requirements. Specific activities and requirements are listed and described in the Supporting Statement for the ICR.

State, local, tribal, or federal reviewing authorities review permit applications and provide for public review of proposed projects and issue permits based on their consideration of all technical factors and public input. The EPA, more broadly, reviews a fraction of the total applications and audits the state and local programs for their effectiveness. Consequently, information prepared and submitted by sources is essential for sources to receive permits, and for federal, state, tribal, and local environmental agencies to adequately review the permit applications and thereby properly administer and manage the NSR programs.

Information that is collected is handled according to the EPA's policies set forth in title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (*see* 40 CFR part 2). *See* also section 114(c) of the Act.

Form numbers: 5900–246, 5900–247, 5900–248, 5900–340, 5900–341, 5900–342, 5900–343, 5900–344, 5900–367, 5900–368, 5900–369, 5900–370, 5900–371, 5900–372, 5900–390, 5900–391, and 6700–06.

Respondents/affected entities: Those which must apply for and obtain a preconstruction permit under part C or D or section 110(a)(2)(C) of title I of the Act. In addition, state, local, and tribal reviewing authorities that must review permit applications and issue permits are affected entities.

Respondent's obligation to respond: Mandatory (40 CFR part 49, subpart C; 40 CFR part 51, subpart I; 40 CFR part 52, subpart A; 40 CFR part 124, subparts A and C).

Estimated number of respondents: 30,359 (total); 30,236 industrial facilities and 123 state, local, and tribal reviewing authorities.

Frequency of response: On occasion, as necessary.

Total estimated burden: 2,970,503 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $237,465,716 (per year). This includes $3,419,792 annually in outsourced start-up costs for preconstruction monitoring.

Changes in estimates: There is decrease of 2,546,172 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease results from a significant reduction in the estimated number of permits issued annually, based on a review of permitting activity in recent years.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2020–24128 Filed 10–29–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 18–122; DA 20–1251; FRS 17200]

Wireless Telecommunications Bureau Announces C-Band Relocation Payment Clearinghouse

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Wireless Telecommunications Bureau (Bureau) announces that CohnReznick LLP (CohnReznick) and subcontractors Squire Patton Boggs (US) LLP (Squire Patton Boggs), and Intellicom Technologies, Inc. (Intellicom) satisfy the selection criteria established by the Commission in the 3.7 GHz Band Report and Order and will serve as the Relocation Payment Clearinghouse for the 3.7–4.2 GHz transition process.

DATES: The Order was released on October 22, 2020.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Susan Mort of the Wireless Telecommunications Bureau at (202) 418–2429 or *Susan.Mort@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Order (DA 20–1251) released on October 22, 2020. The complete text of the Order is available for viewing via the Commission's ECFS website by entering the docket number, GN Docket No. 18–122. The complete text of the Order is also available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW, Room CY–B402, Washington, DC 20554, telephone 202–488–5300, fax 202–488–5563, or you may contact BCPI at its website: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 20–1251.

Synopsis

On March 3, 2020, the Commission released the *3.7 GHz Band Report and Order* (FCC 20–22), which adopted new rules to make available 280 megahertz of mid-band spectrum for flexible use, plus a 20 megahertz guard band, throughout the contiguous United States by transitioning existing services out of the lower portion and into the upper 200 megahertz of the 3.7–4.2 GHz band (C-band). In the *3.7 GHz Report and Order,* the Commission found that selecting a single, independent Clearinghouse to oversee the cost-related aspects of the transition in a fair and transparent manner would serve the public interest. The Commission specified the duties of the Clearinghouse in detail in the *3.7 GHz Report and Order,* including: (1) Collecting from all incumbent space station operators and all incumbent earth station operators a showing of their relocation costs for the transition, as well as a demonstration of the reasonableness of those costs; (2) apportioning costs among overlay licensees and distributing payments to incumbent space station operators, incumbent earth station operators, and appropriate surrogates of those parties that incur compensable costs; (3) resolving disputes regarding cost estimates or payments that may arise during the transition; and (4) providing the detailed information and reports to the Commission and the Bureau to facilitate oversight of the transition process.

To select the Clearinghouse, the Commission appointed a search committee composed of nine entities that the Commission found, collectively, reasonably represented the interests of stakeholders in the transition. The Commission required the search committee to submit detailed selection criteria for the Clearinghouse by June 1, 2020 and to convene no later than June 22, 2020. The Commission directed the search committee to select, no later than July 31, 2020, an entity that demonstrated its ability to perform the duties of the Clearinghouse, including: (1) Engaging in strategic planning and adopting goals and metrics to evaluate its performance; (2) adopting internal controls for its operations; (3) using

enterprise risk management practices; and (4) using best practices to protect against improper payments and to prevent fraud, waste, and abuse in its handling of funds. The search committee was also required to ensure that the Clearinghouse would adopt robust privacy and data security best practices in its operations.

The Commission required the search committee, in notifying the Commission of its selection for the Clearinghouse, to: (a) Fully disclose any actual or potential organizational or personal conflicts of interest or any appearance of such conflicts of interest of the Clearinghouse or its officers, directors, employees, and/or contractors; and (b) detail the salary and benefits associated with each position.

On July 31, 2020, the search committee announced that it had unanimously selected CohnReznick to serve as the Clearinghouse. The search committee also included a document detailing CohnReznick's qualifications, expertise, and ability to fulfill the duties of the Clearinghouse. As directed by the Commission in the *3.7 GHz Report and Order,* the Bureau issued a public notice seeking comment on whether CohnReznick satisfies the criteria established by the Commission in the *3.7 GHz Report and Order.* The Commission received comments from Boeing, CohnReznick, and Vertix.

In the *3.7 GHz Report and Order,* the Commission assigned responsibility for finding, evaluating, and selecting a qualified Clearinghouse to the search committee. The Bureau's role in the selection process is limited to determining whether the selected entity has or has not satisfied the specific criteria set forth in the *3.7 GHz Report and Order.* The search committee fulfilled its responsibility when it unanimously selected CohnReznick to serve as the Clearinghouse and provided the Bureau with detailed information regarding CohnReznick's qualifications and compliance with the selection criteria. Notably, the Search Committee Letter and attachments clearly demonstrate that CohnReznick: (1) Is a neutral and independent entity with no conflicts of interest; (2) has the requisite financial, accounting, auditing and industry expertise necessary to perform the functions of the Clearinghouse; (3) will adopt and follow all relevant industry best practices to facilitate the transition; and (4) will incorporate robust privacy and data security best practices into its operations. After review of the record, the Bureau finds that CohnReznick has satisfied the Clearinghouse selection criteria described in section 27.1414 of the Commission's rules and the *3.7 GHz Report and Order.*

Federal Communications Commission.

Amy Brett,

Associate Division Chief, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau.

[FR Doc. 2020–24189 Filed 10–28–20; 4:15 pm]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request (OMB No. 3064–0153)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its ongoing obligations under the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collection described below (OMB No. 3064–0153). On July 28, 2020, the FDIC requested comment for 60 days on a proposal to renew the information collections described below. No comments were received. The FDIC hereby gives notice of its plan to submit to the Office of Management and Budget (OMB) a request to approve the renewal of this collection, and again invites comment on its renewal.

DATES: Comments will be accepted until November 30, 2020.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency website: https://www.FDIC.gov/regulations/laws/federal.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Jennifer Jones (202–898–6768), Counsel, MB–3078, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jennifer Jones, Counsel, 202–898–6768, *jennjones@fdic.gov,* MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: On July 28, 2020, the FDIC requested comment for 60 days on a proposal to renew the information collections described below. No comments were received. The FDIC hereby gives notice of its plan to submit to the Office of Management and Budget (OMB) a request to approve the renewal of this collection, and again invites comment on its renewal.

Proposal to renew the following currently approved collection of information:

1. *Title:* Regulatory Capital Rules.

OMB Number: 3064–0153.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

ESTIMATED HOURLY BURDEN

Basel III advanced approaches: Recordkeeping, disclosure, and reporting	Type of burden	Estimated number of respondents	Estimated time per response	Frequency of response	Total annual estimated burden
Implementation plan—Section ____.121(b): Ongoing	Recordkeeping	1	330	On Occasion	330
Documentation of advanced systems—Section ____.122(j): Ongoing.	Recordkeeping	1	19	On Occasion	19
Systems maintenance—Sections ____.122(a), ____123(a), ____.124(a): Ongoing.	Recordkeeping	1	27.90	On Occasion	28

ESTIMATED HOURLY BURDEN—Continued

Basel III advanced approaches: Recordkeeping, disclosure, and reporting	Type of burden	Estimated number of respondents	Estimated time per response	Frequency of response	Total annual estimated burden
Supervisory approvals—Sections ____.122(d)–(h), ____.132(b)(3), ____.132(d)(1), ____.132(d)(1)(iii): Ongoing.	Recordkeeping	1	16.82	On Occasion	17
Control, oversight and verification of systems—Sections ____.122 to ____.124: Ongoing.	Recordkeeping	1	11.05	On Occasion	11
(CCR)—Section ____.132(b)(2)(iii)(A): One-time	Recordkeeping	1	80	On Occasion	80
(CCR)—Section ____.132(b)(2)(iii)(A): Ongoing	Recordkeeping	1	16	On Occasion	16
(CCR)—Section ____.132(d)(2)(iv): One-time	Recordkeeping	1	80	On Occasion	80
(CCR)—Section ____.132(d)(2)(iv): Ongoing	Recordkeeping	1	40	On Occasion	40
(CCR)—Section ____.132(d)(3)(vi): One-time	Recordkeeping	1	80	On Occasion	80
(CCR)—Section ____.132(d)(3)(viii): One-time	Recordkeeping	1	80	On Occasion	80
(CCR)—Section ____.132(d)(3)(viii) Ongoing	Recordkeeping	1	10	Quarterly	40
(CCR)—Section ____.132(d)(3)(ix): One-time	Recordkeeping	1	40	On Occasion	40
(CCR)—Section ____.132(d)(3)(ix): Ongoing	Recordkeeping	1	40	On Occasion	40
(CCR)—Section ____.132(d)(3)(x): One-time	Recordkeeping	1	20	On Occasion	20
(CCR)—Section ____.132(d)(3)(xi): One-time	Recordkeeping	1	40	On Occasion	40
(CCR)—Section ____.132(d)(3)(xi): Ongoing	Recordkeeping	1	40	On Occasion	40
(OC)—Section ____.141(b)(3), ____.141(c)(1), ____.141(c)(2)(i)–(ii), ____.153:: One-time.	Recordkeeping	1	40	On Occasion	40
(OC)—Section ____.141(c)(2)(i)–(ii): Ongoing	Recordkeeping	1	10	Quarterly	40
Sections ____.142 and ____.171: Ongoing	Disclosure	1	5.78	On Occasion	6
(CCB and CCYB)—Section ____.173, Table 4 (Securitization)—Section ____.173, Table 9 (IRR)—Section ____.173, Table 12: Ongoing.	Disclosure	1	25	Quarterly	100
(CCB and CCYB)—Section ____.173, Table 4 (Securitization)—Section ____.173, Table 9 (IRR)—Section ____.173, Table 12: One-time.	Disclosure	1	200	On Occasion	200
(Capital Structure)—Section ____.173, Table 2: Ongoing	Disclosure	1	2	Quarterly	8
(Capital Structure)—Section ____.173, Table 2: One-time	Disclosure	1	16	On Occasion	16
(Capital Adequacy)—Section ____.173, Table 3: Ongoing	Disclosure	1	2	Quarterly	8
(Capital Adequacy)—Section ____.173, Table 3: One-time	Disclosure	1	16	On Occasion	16
(CR) —Section ____.173, Table 5: Ongoing	Disclosure	1	12	Quarterly	48
(CR)—Section ____.173, Table 5: One-time	Disclosure	1	96	On Occasion	96
Section ____.304—Opt-In Relief and Related FDIC Approval: Ongoing.	Reporting	7	12	On Occasion	84
Subtotal: One-time Recordkeeping and Disclosure					788
Subtotal: Ongoing Recordkeeping, Disclosure, and Reporting.					875
Total Recordkeeping, Disclosure, and Reporting					1,663
Minimum regulatory capital ratios: Recordkeeping	**Type of burden**	**Estimated number of respondents**	**Estimated time per response**	**Frequency of response**	**Total annual estimated burden**
(CCR Operational Requirements)—Sections ____.3(d) and ____.22(h)(2)(iii)(A): Ongoing.	Recordkeeping	3,270	16	On Occasion	52,320
Subtotal: One-time Recordkeeping					0
Subtotal: Ongoing Recordkeeping					52,320
Total Recordkeeping					52,320
Standardized approach: Recordkeeping and disclosure	**Type of burden**	**Estimated number of respondents**	**Estimated time per response**	**Frequency of response**	**Total annual estimated burden**
(QCCP)—Section ____.35(b)(3)(i)(A): One-time	Recordkeeping	1	2	On Occasion	2
(QCCP)—Section ____.35(b)(3)(i)(A): Ongoing	Recordkeeping	3,270	2	On Occasion	6,540
(CT)—Section ____.37(c)(4)(i)(E): One-time	Recordkeeping	1	80	On Occasion	80
(CT)—Section ____.37(c)(4)(i)(E): Ongoing	Recordkeeping	3,270	16	On Occasion	52,320
(SE)—Section ____.41(b)(3) and ____.41(c)(2)(i): One-time	Recordkeeping	1	40	On Occasion	40
(SE)—Section ____.41(c)(2)(ii): Ongoing	Recordkeeping	3,270	2	On Occasion	6,540
(S.E.)—Section ____.42(e)(2), (C.R.) Sections ____.62(a),(b),& (c), (Q&Q) Sections ____.63(a) & (b): One-time.	Disclosure	1	226.25	On Occasion	226

Standardized approach: Recordkeeping and disclosure	Type of burden	Estimated number of respondents	Estimated time per response	Frequency of response	Total annual estimated burden
(S.E.)—Section ____.42(e)(2), (C.R.) Sections ____.62(a),(b),& (c), (Q&Q) Sections ____.63(a) & (b) and ____.63 Tables: Ongoing.	Disclosure	1	131.25	Quarterly	525
Subtotal: One-time Recordkeeping and Disclosure					348
Subtotal: Ongoing Recordkeeping and Disclosure					65,925
Total Recordkeeping and Disclosure					66,273
ESTIMATED COST TO RESPONDENTS ASSOCIATED WITH HOURLY BURDEN					
Total One-Time Burden Hours					1,136
Total Ongoing Burden Hours					119,120
Total Burden Hours					120,256

General Description of Collection: This collection comprises the disclosure and recordkeeping requirements associated with minimum capital requirements and overall capital adequacy standards for insured state nonmember banks, state savings associations, and certain subsidiaries of those entities. The data is used by the FDIC to evaluate capital before approving various applications by insured depository institutions, to evaluate capital as an essential component in determining safety and soundness, and to determine whether an institution is subject to prompt corrective action provisions. In addition, the Regulatory Capital Rule: Temporary Exclusion of U.S. Treasury Securities and Deposits at Federal Reserve Banks from the Supplementary Leverage Ratio for Depository Institutions, 85 FR 32980 (June 1, 2020) added a new opt-in provision in 12 CFR 324.304 for the temporary exclusion from the total leverage ratio. The new opt-in provision accounts for a slight increase of 84 burden hours.

After factoring in the slight increase in burden hours as a result of the new opt-in provision, along with the changes to the respondent count as a result of economic fluctuation, the information collection is reduced overall by 7,800 hours. Outside of the new opt-in provision, the hours per response and frequency of responses for the rest of the information collection have remained the same.

Request for Comment: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on October 27, 2020.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2020–24074 Filed 10–29–20; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a) (HOLA) and Regulation LL (12 CFR part 238) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 238.53 of Regulation LL (12 CFR 238.53). Unless otherwise noted, these activities will be conducted throughout the United States.

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 whether the proposed transaction complies with the standards enumerated in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)).

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 November 16, 2020.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *BancKentucky, Inc., Murray, Kentucky;* to engage de novo in the acquisition of improved real estate for remodeling, rehabilitation, modernization, renovation, or demolition and rebuilding for sale or for rental and maintenance and management of improved real estate pursuant to sections 238.53(b)(7) and (b)(8) of Regulation LL.

Board of Governors of the Federal Reserve System, October 27, 2020.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2020–24096 Filed 10–29–20; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

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 question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the 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 November 16, 2020.

A. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Cando Holding Company, Inc., Cando, North Dakota;* through its subsidiary bank, First State Bank of Cando, also Cando, North Dakota, to indirectly retain voting shares of AccuData Services, Inc., Park River, North Dakota, and thereby engage in certain data processing activities pursuant to § 225.28(b)(14)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, October 27, 2020.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2020–24104 Filed 10–29–20; 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 November 16, 2020.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414::

1. *Clyde A. Gelderloos, Chana, Illinois;* to retain voting shares of Holcomb Bancorp, Inc., Rochelle, Illinois, and thereby indirectly retain voting shares of Holcomb Bank, also of Rochelle, Illinois. In addition, Carol L. Hayenga, Kings, Illinois, together with James D. Carmichael, and Noah J. Carmichael, both of Rochelle, Illinois, as a group acting in concert, to retain voting shares of Holcomb Bancorp, Inc., and thereby indirectly retain voting shares of Holcomb Bank.

Board of Governors of the Federal Reserve System, October 27, 2020.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2020–24101 Filed 10–29–20; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[Notice–ID–2020–01; Docket No. 2020–0002; Sequence No. 6]

Privacy Act of 1974; Rescindment of a System of Records Notice

AGENCY: General Services Administration, (GSA).

ACTION: Notice.

SUMMARY: Pursuant to the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular No. A–108, notice is hereby given that the General Services Administration (GSA) proposes to rescind the GSA/PBS–6 Electronic Acquisition System (EAS) SORN. EAS no longer maintains any Personally Identifiable Information (PII). GSA's replacement for EAS, the EASi application, accesses vendor information from the System for Award Management (SAM) GSA/GOVT–9, where this information is collected and stored.

DATES: *Applicable:* October 30, 2020.

ADDRESSES: Submit comments identified by ''Notice–ID–2020–01, Rescindment of a System of Records'' by any of the following methods:

- *Regulations.gov: http://www.regulations.gov* by searching for Notice–ID–2020–01, Rescindment of a System of Records Notice. Select the link ''Comment Now'' that corresponds with ''Notice–ID–2020–01, Rescindment of a System of Records Notice.'' Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Notice–ID–2020–01, Rescindment of a System of Records Notice'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/Notice–ID–2020–01, Rescindment of a System of Records Notice.

FOR FURTHER INFORMATION CONTACT: Call or email the GSA Chief Privacy Officer: telephone 202–322–8246; email *gsa.privacyact@gsa.gov.*

SUPPLEMENTARY INFORMATION: EAS (also known as Comprizon) was decommissioned on September 30, 2016 when the EASi application fully came

online and all active EAS/Comprizon contracts were migrated into the new EASi application. A complete snapshot of the EAS/Comprizon data was taken and stored in the Business Intelligence (BI) database. The snapshot still exists in the BI database today and is used for querying and reporting purposes. None of the EAS/Comprizon records currently in the BI database contain PII. The replacement system for EAS, EASi, also does not contain PII. The vendor information is directly collected and stored in SAM.

SYSTEM NAME AND NUMBER:

GSA/PBS–6 Electronic Acquisition System (EAS).

HISTORY:

73 FR 22389.

Richard Speidel,

Chief Privacy Officer, Office of the Deputy Chief Information Officer, General Services Administration.

[FR Doc. 2020–24077 Filed 10–29–20; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–21–1277; Docket No. CDC–2020–0109]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on the existing information collection project titled The Childcare Survey of Activity and Wellness (C–SAW) Pilot Study. The pilot study will determine the current practices and policies of early care and education (ECE) providers in four states around nutrition, physical activity, and wellness and will inform the development of a potential national surveillance system.

DATES: CDC must receive written comments on or before December 29, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0109 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

*Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.*

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

The Childcare Survey of Activity and Wellness (C–SAW) Pilot Study—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) works to promote optimal nutrition, physical activity, and wellness in early care and education (ECE) facilities for children 0–5 years of age. Consistent with this mission, and with clear evidence that ECE facilities can impact the habits and preferences of young children, CDC obtained OMB approval (OMB Control No. 0920–1277, Expiration Date 12/31/2020) to conduct a pilot survey to better understand ECE center practices related to nutrition, physical activity, and wellness. CDC was unable to collect the information as planned due to closures of ECE centers because of the COVID–19 pandemic. CDC is requesting an extension of the collection for two years due to the COVID–19 pandemic and its impact on information collection and to collect 10 additional COVID–19 related questions on the survey to understand the impact of COVID–19 on our topic areas of child care center status, nutrition, physical activity and wellness The additional questions are expected to minimally affect burden. These critical data are used to effectively inform state and national programs.

Data collected from this pilot survey will be used to understand the current practices of ECE centers in a representative sample in four states. This initial C–SAW will establish baseline measures of the prevalence of specific practices related to nutrition, physical activity, and wellness in a standard way across states. This baseline will also allow CDC and state partners to better understand ECE center needs and provide opportunities for collaboration and areas for improvement at the state and national levels. Second, the survey will be used to inform the development of a potential national

surveillance system enabling states and CDC to track changes over time and obtain data to guide the planning, implementation, and evaluation of national and state obesity prevention efforts.

A sample of approximately 1,200 ECE centers across four states will be recruited to participate in this one-time data collection effort. Each center will receive a recruitment letter introducing the survey, explaining its objectives and the importance of their participation, and instructions for completing the survey. It is anticipated that most responses will be submitted online via the internet. However, paper surveys will be available upon request. Approximately two weeks after the initial recruitment letter is mailed, all sampled centers will receive a reminder postcard. Approximately four weeks after the initial recruitment letter is mailed, non-respondents will be sent another letter along with a hardcopy of the questionnaire.

Participation in this study is completely voluntary and there are no costs to the respondent other than their time. The estimated annualized burden hours is 409. The approval request is for two years.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
ECE Director or Administrator	Recruitment Letter	1,140	1	5/60	95
ECE Director or Administrator	Web/Mail Survey	627	1	30/60	314
Total					409

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2020–24230 Filed 10–28–20; 4:15 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Decision To Evaluate a Petition To Designate a Class of Employees From the Pinellas Plant in Clearwater, Florida, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: NIOSH gives notice of a decision to evaluate a petition to designate a class of employees from the Pinellas Plant in Clearwater, Florida, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000.

FOR FURTHER INFORMATION CONTACT: Grady Calhoun, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 1090 Tusculum Avenue, MS C–46, Cincinnati, OH 45226–1938, Telephone 513–533–6800. Information requests can also be submitted by email to *DCAS@CDC.GOV.*

SUPPLEMENTARY INFORMATION: Pursuant to 42 CFR 83.12, the initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Pinellas Plant.

Location: Clearwater, Florida.

Job Titles and/or Job Duties: All employees who worked in any areas of Pinellas Plant.

Period of Employment: May 19, 1957 through December 31, 1997.

Authority: 42 CFR 83.9–83.12.

John J. Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2020–24123 Filed 10–29–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–381]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by December 29, 2020.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–381 Identification of Extension Units of Medicare Approved Outpatient Physical Therapy/Outpatient Speech Pathology (OPT/OSP) Providers and Supporting Regulations

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. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Identification of Extension Units of Medicare Approved Outpatient Physical Therapy/Outpatient Speech Pathology (OPT/OSP) Providers and Supporting Regulations; *Use:* Form CMS–381 was developed to ensure that each OPT/OSP extension location at which OPT/OSP providers furnish services, must be reported by the providers to the State Survey Agencies (SAs). Form CMS–381 is completed when: (1) New OPT/OSP providers enter the Medicare program; (2) when existing OPT/OPS providers delete or add a service, or close or add an extension location; or, (3) when existing OPT/OSP providers are recertified by the State Survey Agency every 6 years. *Form Number:* CMS–381 (OMB control number: 0938–0273); *Frequency:* Occasionally; *Affected Public:* Private Sector; Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 2,083; *Total Annual Responses:* 443; *Total Annual Hours:* 111. (For policy questions regarding this collection contact Caroline Gallaher at 410–786–8705.)

Dated: October 27, 2020.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2020–24132 Filed 10–29–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Information Comparison With Insurance Data (OMB #0970–0342)

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, HHS.

ACTION: Request for Public Comment.

SUMMARY: The Administration for Children and Families' (ACF) Office of Child Support Enforcement (OCSE) is requesting a 3-year extension of the currently approved Information Comparison with Insurance Data (OMB #0970–0342; Expires 1/31/2021).

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect 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 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION:

Description: The Deficit Reduction Act of 2005 amended Section 452 of the Social Security Act to authorize the Secretary, through the Federal Parent Locator Service (FPLS), to conduct comparisons of information concerning individuals owing past-due child support with information maintained by insurers (or their agents) concerning insurance claims, settlements, awards, and payments. The two options to participate in the Information Comparison with Insurance Data program are (1) insurers submit information concerning claims, settlements, awards, and payments to the federal OCSE. OCSE compares it to information pertaining to parents who owe past-due support. (2) OCSE will send a file containing information about parents who owe past-due support to the insurer, or their agent, to compare with their claims, settlements, awards, and payments. The insurer or their agent sends any resulting insurance data matches to OCSE. On a daily basis, OCSE sends the results of the insurance data match in an ''Insurance Match Response Record'' to child support agencies responsible for collecting past-due support. The child support agencies use the insurance data matches to collect past-due support from the insurance proceeds.

Respondents: Insurers or their agents, including the U.S. Department of Labor and state agencies administering workers' compensation programs, and the Insurance Services Office.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents annually	Total number of annual responses per respondent	Average annual burden hours per response	Total/annual burden hours
Insurance Match File: Monthly, Reporting Electronically	26	12	0.083	25.90
Insurance Match File: Weekly, Reporting Electronically	9	52	0.083	38.84

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Total number of respondents annually	Total number of annual responses per respondent	Average annual burden hours per response	Total/annual burden hours
Insurance Match File: Daily, Reporting Electronically	2	251	0.083	41.67
Match File: Daily, Reporting Manually	108	251	0.1	2,710.80

Estimated Total Annual Burden Hours: 2,817.21.

Authority: 42 U.S.C. 652(a)(9), which requires OCSE to operate the FPLS established by 42 U.S.C. 653(a)(1) and 42 U.S.C. 652(m), which authorizes OCSE, through the FPLS, to compare information concerning individuals owing past-due support with information maintained by insurers (or their agents) concerning insurance claims, settlements, awards, and payments, and to furnish information resulting from the data matches to the state child support agencies responsible for collecting child support from the individuals.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–24141 Filed 10–29–20; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–3326]

Reauthorization of the Biosimilar User Fee Act; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is hosting a virtual public meeting on the reauthorization of the Biosimilar User Fee Act (BsUFA) for fiscal years (FYs) 2023 through 2027. BsUFA authorizes FDA to collect user fees to support the process for the review of biosimilar biological products. The current legislative authority for BsUFA expires in September 2022. At that time, new legislation will be required for FDA to continue collecting user fees in future fiscal years. FDA begins the BsUFA reauthorization process by publishing a notice in the **Federal Register** requesting public input and holding a public meeting where the public may present its views on the reauthorization. FDA invites public comment as the Agency begins the process to reauthorize the program for FYs 2023 through 2027. These comments will be published and available on FDA's website.

DATES: The public meeting will be held on November 19, 2020, from 9 a.m. to 12:30 p.m., and will be held by webcast only. Registration to attend the meeting and other information can be found at *https://bsufaiii-publicmeeting.eventbrite.com.* Submit either electronic or written comments on this public meeting by December 19, 2020. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

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 December 19, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 19, 2020. 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, 240–402–7500.
- 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–2015–N–3326 for ''Reauthorization of the Biosimilar User Fee Act; Public Meeting; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- 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.gpo.gov/fdsys/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. Transcripts of the meeting will be available on the FDA website at: *https://www.fda.gov/industry/biosimilar-user-fee-amendments/public-meeting-reauthorization-biosimilar-user-fee-act-bsufa-11192020-11192020* approximately 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Emily Ewing, Center for Drug Evaluation and Research, 240–402–0196, *Emily.Ewing@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing a virtual public meeting to begin the process for the reauthorization of the Biosimilar User Fee Act (BsUFA). The authority to collect user fees under BsUFA expires in September 2022. Without new legislation, FDA would no longer be able to collect user fees for future fiscal years to fund the biosimilar biological product review process. Before FDA begins negotiations with the regulated industry on BsUFA reauthorization, the Agency is holding the public meeting announced in this notice, at which stakeholders, including all members of the public, may present their views on reauthorization, including any suggestions for changes to the performance goals referred to in the ''Biosimilar Biological Product Reauthorization Performance Goals and Procedures Fiscal Years 2018 through 2022'' (the BsUFA II Commitment Letter). In addition, FDA will provide a period of 30 days after the public meeting for the public to submit written comments. The purpose of this public meeting is to hear stakeholder views on BsUFA as we consider elements to propose, update, or discontinue in the next BsUFA. In addition to any other relevant information the public would like to share, the FDA is interested in responses to the following three general questions:

- What is your assessment of the overall performance of the BsUFA program to date?
- What current elements should be retained, changed, or discontinued to further strengthen and improve the program?
- What new elements should FDA consider adding to the program to enhance the efficiency and effectiveness of the biosimilar biologic review process?

II. What is BsUFA? What does it do?

FDA provides the following information to help potential meeting participants better understand the history and evolution of BsUFA and its status. BsUFA is a law that authorizes FDA to assess and collect fees from drug companies that submit marketing applications for biosimilar biological products. BsUFA was originally enacted in 2012 as the Biosimilar User Fee Act under the Food and Drug Administration Safety and Innovation Act (FDASIA, Pub. L. 112–144) for a period of 5 years. In 2017, BsUFA was renewed for five more years under the FDA Reauthorization Act of 2017 (FDARA, Pub. L. 115–52). BsUFA's intent is to provide additional revenues so that FDA can hire staff, improve systems, and continue a well-managed biosimilar biological product review process to make biosimilar biological product therapies available to patients sooner. As part of FDA's agreements with industry during prior BsUFA authorizations, the Agency agreed to certain performance and procedural goals and other commitments, which are documented on FDA's website. The goals apply to the process for the review of biosimilar biological product applications, including biosimilar biological product development meetings, review of applications and supplements, and other review activities. FDA's website provides more information about BsUFA, including the statutory text of the FDA Reauthorization Act of 2017 (FDARA, Pub. L. 115–52), the BsUFA II Commitment Letter, ''Biosimilar Authorization Performance Goals and Procedures Fiscal Years 2013 through 2017'' (the BsUFA Commitment Letter), key **Federal Register** documents, BsUFA-related guidances, BsUFA user fee rates, performance reports, and financial reports: *https://www.fda.gov/industry/fda-user-fee-programs/biosimilar-user-fee-amendments.*

With the current authorization of BsUFA II under FDARA, FDA implemented a review program (''the Program'') to promote the efficiency and effectiveness of the first cycle review process and minimize the number of review cycles necessary for approval. The Program allowed for additional communication between the FDA review team and applicants of biosimilar biological products, including pre-submission meetings, mid-cycle communications and late-cycle meetings, while adding 60 days to the review clock to provide for this increased interaction and to address review issues to accommodate this additional interaction. BsUFA II also includes commitments to advance development of biosimilar biological products through further clarification of the 351(k) regulatory pathway, and to enhance capacity for biosimilar regulations and guidance development, reviewer training, and timely communication. More information on these commitments can be found in the BsUFA II commitment letter at *https://www.fda.gov/media/100573/download.*

BsUFA II established an independent fee structure and fee amounts to ensure stable and predictable user fee funding, improve the predictability of FDA funding and sponsor invoices, improve efficiency by simplifying the administration of user fees, and enhance flexibility of financial mechanisms to improve management of BsUFA program funding. The structure also established a BsUFA target revenue based on BsUFA program costs and updated the overall fee structure. The agreement also included commitments to enhance management of user fee resources through the development of a resource capacity planning capability and third-party evaluation of program resource management, management of the carryover balance, along with the publication and annual update of a five-year financial plan.

The current authorization also includes several commitments to improve the hiring and retention of critical review staff through modernization of FDA's hiring system, augmentation of hiring staff capacity and capabilities, creation of a dedicated function focused on staffing the program, reporting on hiring metrics, and a comprehensive and continuous assessment of hiring and retention. A list of the deliverables developed to meet BsUFA II commitments is available on the FDA web page at *https://www.fda.gov/industry/biosimilar-user-fee-amendments/completed-bsufa-ii-deliverables.*

III. Public Meeting Information

A. Purpose and Scope of the Meeting

The meeting format will include presentations by FDA and a series of panels representing different stakeholder groups. We will also provide an opportunity for other stakeholders to provide public comment at the meeting. FDA policy issues outside of the BsUFA program are beyond the scope of these reauthorization discussions. Accordingly, the comments should focus on process enhancements and funding issues, and not on policy issues.

B. Participating in the Public Meeting

Registration: Persons interested in attending this virtual public meeting should register online by 11:59 p.m. Eastern Time on November 5, 2020, at *https://bsufaiii-publicmeeting.eventbrite.com.* Please provide complete contact information for each attendee, including name, title, affiliation, email, and telephone.

Opportunity for Public Comment: Those who register online by November 5, 2020, will receive a notification about an opportunity to participate in the public comment session of the meeting. If you wish to speak during the public comment session, follow the instructions in the notification and identify which topic(s) you wish to address. We will do our best to accommodate requests to make public comments. Individuals and organizations with common interests are urged to consolidate or coordinate their comments and request time jointly. All requests to make a public comment during the meeting must be received by November 5, 2020, 11:59 p.m. Eastern Time. We will determine the amount of time allotted to each commenter, the approximate time each comment is to begin, and will select and notify participants by November 12, 2020. No commercial or promotional material will be permitted to be presented at the public meeting.

Streaming Webcast of the Public Meeting: The webcast for this public meeting is available at *https://collaboration.fda.gov/bsufanov2020/.*

If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *https://www.adobe.com/go/connectpro_overview.* FDA has verified the website addresses in this document, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

Transcripts: Please be advised that as soon as a transcript of the public meeting is available, it will be accessible at *https://www.regulations.gov.* It may be viewed at the Dockets Management Staff (see ADDRESSES). A link to the transcript will also be available on the internet at *https://www.fda.gov/industry/biosimilar-user-fee-amendments/public-meeting-reauthorization-biosimilar-user-fee-act-bsufa-11192020-11192020.*

Dated: October 26, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020–24028 Filed 10–29–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–2088]

Sanofi-Aventis U.S. LLC, et.al.; Withdrawal of Approval of 11 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is withdrawing approval of 11 abbreviated new drug applications (ANDAs) from multiple applicants. The applicants notified the Agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: Approval is withdrawn as of November 30, 2020.

FOR FURTHER INFORMATION CONTACT: Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1676, Silver Spring, MD 20993–0002, 240–402–6980, *Martha.Nguyen@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The applicants listed in the table have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications under the process described in § 314.150(c) (21 CFR 314.150(c)). The applicants have also, by their requests, waived their opportunity for a hearing. Withdrawal of approval of an application or abbreviated application under § 314.150(c) is without prejudice to refiling.

Application No.	Drug	Applicant
ANDA 061884	Rifamate (isoniazid and rifampin) Capsules, 150 milligrams (mg); 300 mg.	Sanofi-Aventis U.S. LLC 55 Corporate Dr., Bridgewater, NJ 08807.
ANDA 065196	Ceftazidime for Injection, 1 gram(g)/vial	Morton Grove Pharmaceuticals Inc./Wockhardt USA LLC., 6451 Main St., Morton Grove, IL 60053.
ANDA 065197	Cefotaxime for Injection, Equivalent to (EQ) 1 g base/vial; EQ 2 g base/vial; EQ 500 mg base/vial.	Do.
ANDA 078229	Terbinafine Hydrochloride (HCl) Tablets, EQ 250 mg base.	Do.
ANDA 081134	Niacin Tablets, 500 mg	Do.
ANDA 091659	Heparin Sodium Injection, 5,000 units/milliliter (mL)	CASI Pharmaceuticals, Inc., 9620 Medical Center Dr., Suite 300, Rockville, MD 20850.
ANDA 202647	Granisetron HCl Injection, EQ 0.1 mg base/mL (EQ 0.1 mg base/mL).	Yung Shin Pharmaceutical Industrial Co., Ltd./Carlsbad Technology, Inc., 5922 Farnsworth Ct., Carlsbad, CA 92008.
ANDA 202648	Granisetron HCl Injection, EQ 1 mg base/mL (EQ 1 mg base/mL); EQ 4 mg base/4 mL (EQ 1 mg base/mL).	Do.
ANDA 205173	Bosentan Tablets, 62.5 mg and 125 mg	Mylan Pharmaceuticals Inc., 781 Chestnut Ridge Rd., P.O. Box 4310, Morgantown, WV 26504.
ANDA 207843	Telmisartan Tablets, 20 mg, 40 mg, and 80 mg	Hisun Pharmaceutical (Hangzhou) Co., Ltd./Hisun Pharmaceuticals USA, Inc., 200 Crossing Blvd., 2nd Floor, Bridgewater, NJ 08807.

Application No.	Drug	Applicant
ANDA 210681	Ranitidine HCl Capsules, EQ 150 mg base and EQ 300 mg base.	Novitium Pharma LLC, 70 Lake Dr., East Windsor, NJ 08520.

Therefore, approval of the applications listed in the table, and all amendments and supplements thereto, is hereby withdrawn as of November 30, 2020. Approval of each entire application is withdrawn, including any strengths and dosage forms inadvertently missing from the table. Introduction or delivery for introduction into interstate commerce of products without approved new drug applications violates section 301(a) and (d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(a) and (d)). Drug products that are listed in the table that are in inventory on November 30, 2020 may continue to be dispensed until the inventories have been depleted or the drug products have reached their expiration dates or otherwise become violative, whichever occurs first.

Dated: October 26, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020–24012 Filed 10–29–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Radiation Exposure Screening and Education Program, OMB No. 0906–0012—Extension

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than December 29, 2020.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Radiation Exposure Screening and Education Program, OMB No. 0906–0012—Extension.

Abstract: The Radiation Exposure Screening and Education Program (RESEP) is authorized by section 417C of the Public Health Service Act (42 U.S.C. 285a–9). The purpose of RESEP is to assist individuals who live (or lived) in areas where U.S. nuclear weapons testing occurred and who are diagnosed with cancer and other radiogenic diseases caused by exposure to nuclear fallout or nuclear materials such as uranium. RESEP funds support eligible health care organizations in: Implementing cancer screening programs; developing education programs; disseminating information on radiogenic diseases and the importance of early detection; screening eligible individuals for cancer and other radiogenic diseases; providing appropriate referrals for medical treatment; and facilitating documentation of Radiation Exposure.

Need and Proposed Use of the Information: For this program, performance measures were drafted to provide data useful to the program and to enable HRSA to provide aggregate program data required by Congress under the Government Performance and Results Act of 1993 (Pub. L. 103–62). These measures cover the principal topic areas of interest to the Federal Office of Rural Health Policy, including: (a) Demographics for the RESEP program user population; (b) medical screening activities for cancers and other radiogenic diseases; (c) exposure and presentation types for eligible radiogenic malignant and nonmalignant diseases; (d) referrals for appropriate medical treatment; (e) eligibility counseling and referral assistance for the RECA; and (f) program outreach and education activities. These measures will speak to the Office's progress toward meeting the goals set.

Likely Respondents: Radiation Exposure Screening and Education Program award recipients.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. 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. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Radiation Expose Screening and Education Program	8	1	8	12	96
	8		8		96

HRSA specifically requests comments on: (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.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020–24122 Filed 10–29–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Ninth Meeting of the National Clinical Care Commission

AGENCY: Office on Women's Health, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The National Clinical Care Commission (the Commission) will conduct its ninth meeting virtually on November 17, 2020. The Commission is charged to evaluate and make recommendations to the U.S. Department of Health and Human Services (HHS) Secretary and Congress regarding improvements to the coordination and leveraging of federal programs related to diabetes and its complications.

DATES: The meeting will take place on November 17, 2020, from 1 p.m. to approximately 5:30 p.m. Eastern Standard time (EST).

ADDRESSES: The meeting will be held online via webinar. To register to attend the meeting, please visit the registration website at *https://kauffmaninc.adobeconnect.com/nccc_9/event/event_info.html*.

FOR FURTHER INFORMATION CONTACT: Clydette Powell, M.D., M.P.H., F.A.A.P., Designated Federal Officer, National Clinical Care Commission, U.S. Department of Health and Human Services, Office on Women's Health, 200 Independence Ave. SW 7th Floor, Washington DC 20201. Phone: (240) 453–8239. Email: *OHQ@hhs.gov.*

SUPPLEMENTARY INFORMATION: The National Clinical Care Commission Act (Pub. L. 115–80) requires the HHS Secretary to establish the National Clinical Care Commission. The Commission consists of representatives of specific federal agencies and non-federal individuals who represent diverse disciplines and views. The Commission will evaluate and make recommendations to the HHS Secretary and Congress regarding improvements to the coordination and leveraging of federal programs related to diabetes and its complications.

The ninth meeting will be held virtually and will consist of updates from the Commission's three subcommittees and a discussion of public comments and outreach to stakeholder organizations. Additionally, the Commission will discuss the second round of potential ''action plans'' from the subcommittees (*i.e.,* recommendations). The final meeting agenda will be available prior to the meeting at *https://health.gov/our-work/health-care-quality/national-clinical-care-commission/meetings*.

Public Participation at Meeting: The Commission invites public comment on issues related to the Commission's charge. There will be an opportunity for limited oral comments (each no more than 3 minutes in length) at this virtual meeting. Virtual attendees who plan to provide oral comments at the Commission meeting during a designated time must register prior to the meeting at *https://kauffmaninc.adobeconnect.com/nccc_9/event/event_info.html*.

Written comments are welcome throughout the entire development process of the Commission's work and may be emailed to *OHQ@hhs.gov*. Written comments should not exceed three pages in length.

Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should indicate the special accommodation when registering online or by notifying Jennifer Gillissen at *jennifer.gillissen@kauffmaninc.com* by November 9, 2020.

Authority: The National Clinical Care Commission is required under the National Clinical Care Commission Act (Pub. L. 115–80). The Commission is governed by provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C., App.) which sets forth standards for the formation and use of federal advisory committees.

Dated: October 27, 2020.

Dorothy Fink,

Deputy Assistant Secretary for Women's Health, Office of the Assistant Secretary for Health.

[FR Doc. 2020–24126 Filed 10–29–20; 8:45 am]

BILLING CODE 4150–32–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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, 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; Small Business Innovation Research (SBIR) Phase II Program Contract Solicitation (PHS 2019–1) Topic 74.

Date: November 24, 2020.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G62A, Rockville, MD 20892, Bethesda, MD (Virtual Meeting).

Contact Person: Eleazar Cohen, 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 3G62A, Bethesda, MD 20892, (240) 669–5081, *ecohen@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: October 26, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–24081 Filed 10–29–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Final NIH Policy for Data Management and Sharing and Supplemental Information

AGENCY: National Institutes of Health, HHS.

ACTION: Notice of final Policy.

SUMMARY: The National Institutes of Health (NIH) is issuing this final NIH Policy for Data Management and Sharing (DMS Policy) to promote the management and sharing of scientific data generated from NIH-funded or conducted research. This Policy establishes the requirements of submission of Data Management and Sharing Plans (hereinafter Plans) and compliance with NIH Institute, Center, or Office (ICO)-approved Plans. It also emphasizes the importance of good data management practices and establishes the expectation for maximizing the appropriate sharing of scientific data generated from NIH-funded or conducted research, with justified limitations or exceptions. This Policy applies to research funded or conducted by NIH that results in the generation of scientific data.

DATES: This final Policy is effective January 25, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions, or require additional background information about the DMS Policy, please contact Dr. Lyric Jorgenson, by email at (*sciencepolicy@od.nih.gov*), or telephone at 301–496–9838.

SUPPLEMENTARY INFORMATION: Sharing scientific data accelerates biomedical research discovery, in part, by enabling validation of research results, providing accessibility to high-value datasets, and promoting data reuse for future research studies.[1] As a steward of the nation's investment in biomedical research, and in accordance with 42 U.S.C. 282, of the Public Health Service Act, as amended, NIH has long championed policies that make research available to the public to achieve these goals. For example, the 2003 NIH Data Sharing Policy reinforced NIH's commitment to data sharing by requiring investigators to address data sharing in applications for large research awards. NIH's 2014 Genomic Data Sharing (GDS) Policy, initially preceded by the 2008 Genome-Wide Association Studies Policy, set the expectation that researchers share large-scale genomic data, regardless of species, to enable the combination of large and information-rich datasets. In 2016, the NIH Policy on the Dissemination of NIH-Funded Clinical Trial Information (Clinical Trials Policy) further reinforced NIH's commitment to research participants and the research community by making the results of clinical trials accessible in a timely fashion.

NIH recognizes that its data sharing policy efforts must flexibly evolve to keep pace with scientific and technological opportunities and notes that researchers' ability to generate, store, share, and combine data has never been greater. To capitalize on these advancements, NIH initiated the development of a more comprehensive data sharing policy alongside its efforts to modernize data sharing infrastructure in its 2015 Plan for Increasing Access to Scientific Publications and Digital Scientific Data from NIH Funded Scientific Research. With policy and infrastructure modernization efforts working in tandem, NIH initiated a stepwise process for seeking feedback from the community to develop a robust data sharing policy capable of reflecting the diversity of its community's data sharing needs. In 2016, NIH requested public comments on data management and sharing strategies and priorities (NOT–OD–17–015). In 2018, NIH solicited public input on proposed key provisions that could serve as a foundation for a future NIH policy for data management and sharing (NOT–OD–19–014). Using public feedback to inform its thinking, in 2019 NIH released a draft proposal for a future data management and sharing policy in the **Federal Register** (84 FR 60398).

Along with the Draft Policy proposal, NIH sought feedback on supplemental materials that could help researchers integrate effective data management and sharing practices into research, including ''Elements of an NIH Data Management and Sharing Plan'' and ''Allowable Costs for Data Management and Sharing.'' We note that a third document, ''Supplemental Information to the NIH Policy for Data Management and Sharing: Selecting a Repository for Data Resulting from NIH-Supported Research,'' was developed in response to public comments received on both the Draft Policy and the ''Request for Public Comments on Draft Desirable Characteristics of Repositories for Managing and Sharing Data Resulting From Federally Funded Research,'' which was released for public comment by the White House Office of Science and Technology Policy (OSTP) to promote consistency across federal agencies and reduce researcher burden (85 FR 3085).

In respect and recognition of Tribal sovereignty, NIH also initiated Tribal Consultation on its Draft Policy proposal, in accordance with the HHS Tribal Consultation Policy and the NIH Guidance on the Implementation of the HHS Tribal Consultation Policy. The NIH Tribal Consultation Report—NIH Draft Policy for Data Management and Sharing provides more detail on the Tribal Consultation process relative to the development of the final DMS Policy and NIH's response. Briefly, three themes emerged from Tribal Nations' input: (1) Strengthen engagement built on trust between researchers and Tribal Nations; (2) Train researchers to responsibly and respectfully manage and share American Indian and Alaska Native (AI/AN) data; and (3) Ensure research practices are aligned with the laws, policies, and preferences of AI/AN community partners. NIH intends to continue discussions to ensure appropriate implementation of the DMS Policy as it relates to these communities, and details about some of the implementation planning follows in the discussion below.

Overview of Public Comments

NIH incorporated feedback over the course of several years to develop a data management and sharing policy proposal and released its Request for Comments on the Draft NIH Policy for Data Management and Sharing and Draft Supplemental Guidance on November 8, 2019 (84 FR 60398, comment period closing on January 10, 2020). NIH held a public webinar on December 16, 2019, with over 580 people participating. In response to the Draft Policy, NIH received 203 responses from both domestic and international stakeholders, and the comments are publicly available.[2] The largest group of respondents reported affiliation with universities, followed by nonprofit research organizations, professional associations (tied with ''other''), as well as small percentages of respondents affiliated with government agencies, healthcare delivery organizations, and patient advocacy organizations. Respondents typically identified themselves as scientific researchers, while another sizeable section self-identified as ''other.'' Remaining respondents identified as institutional officials, with smaller percentages self-identified as bioethicists or social science researchers, government officials, patient advocates, and members of the public. NIH considered all feedback in the development of the final DMS Policy, and a discussion of the public comments on topics follows below.

[1] See also NIH Rigor and Reproducibility efforts at *https://www.nih.gov/research-training/rigor-reproducibility.*

[2] Compiled Public Comments on a DRAFT NIH Policy for Data Management and Sharing and Supplemental DRAFT Guidance (February 2020) *https://osp.od.nih.gov/wp-content/uploads/RFI_Final_Report_Feb2020.pdf.*

Discussion of Public Comments on the Draft NIH Policy for Data Management and Sharing

Clarifying Expectations for Sharing Scientific Data

Draft Policy: The Draft Policy did not explicitly set a default expectation of data sharing. Rather, it focused on requiring submission of and compliance with a Data Management and Sharing Plan (Plan) that outlines how data will be managed and shared. The Draft Policy also included recognition of that fact that certain factors (*i.e.,* legal, ethical, or technical) may limit the ability to preserve and share data.

Public Comments: While commenters were generally supportive of the overall scope of the Draft Policy, many requested NIH make an explicitly stronger commitment to expecting data sharing from the research community. Suggestions included requiring data sharing and indicating that data sharing should be the default, with well justified exceptions being permitted.

Final Policy: The final DMS Policy does not create a uniform requirement to share all scientific data. Unlike a requirement for submission of Plans, which can be implemented across various funding mechanisms and types of research with little variation, appropriate data sharing is likely to be varied and contextual. Through the requirement to submit a Plan, researchers are prospectively planning for data sharing, which we anticipate will increasingly lead researchers to integrate data sharing into the routine conduct of research. Accordingly, we have included in the final DMS Policy an expectation that researchers will maximize appropriate data sharing when developing Plans. The final DMS Policy retains the Draft Policy's factors (*i.e.,* ethical, legal, or technical) that may necessitate variations in the extent of scientific data preservation and sharing, and researchers should convey such factors in their Plans. The final DMS Policy has also been modified to clarify these factors are not limited to data derived from human research participants. We believe this will provide the necessary flexibility for researchers to accommodate the substantial variety in research fields, projects, and data types that this expectation will encompass.

Definition of ''Scientific Data''

Draft Policy: The scope of which data will be shared relies on the definition of ''scientific data.'' This term was defined in the Draft Policy as: ''The recorded factual material commonly accepted in the scientific community as necessary to validate and replicate research findings, regardless of whether the data are used to support scholarly publications. Scientific data do not include laboratory notebooks, preliminary analyses, completed case report forms, drafts of scientific papers, plans for future research, peer reviews, communications with colleagues, or physical objects, such as laboratory specimens. NIH expects that reasonable efforts will be made to digitize all scientific data.''

Public Comments: Commenters focused on a variety of aspects of the definition of ''scientific data.'' They suggested that the concept of data quality be included, as data that may otherwise meet the definition but, if uninterpretable, are not of value. Commenters also suggested the definition address null or negative findings (and indicate that these data should be shared). Commenters requested clarification about the sentence that NIH expects reasonable efforts will be made to digitize all scientific data, including whether NIH would cover costs to digitize data that are not collected in digital form.

Final Policy: The final DMS Policy defines Scientific Data as: ''The recorded factual material commonly accepted in the scientific community as of sufficient quality to validate and replicate research findings, regardless of whether the data are used to support scholarly publications. Scientific data do not include laboratory notebooks, preliminary analyses, completed case report forms, drafts of scientific papers, plans for future research, peer reviews, communications with colleagues, or physical objects, such as laboratory specimens.'' We agree that data quality is an important concept to convey to ensure that scientific data are useful and to prevent data sharing from becoming a perfunctory administrative requirement, but rather one that should be done with the understanding that these data are intended to be used by others. Therefore, we have added to the definition that the data should be of sufficient quality to validate and replicate research findings. Even those scientific data not used to support a publication are considered scientific data and within the final DMS Policy's scope. We understand that a lack of publication does not necessarily mean that the findings are null or negative; however, indicating that scientific data are defined independent of publication is sufficient to cover data underlying null or negative findings.

We also note that while the final DMS Policy states that scientific data are those as of sufficient quality to ''validate and replicate,'' we anticipate that shared scientific data will be used for a variety of purposes (consistent with applicable laws, policies, and limitations) including subsequent analyses, as suggested in the Purpose section of the final DMS Policy. Therefore, the concepts of validation and replication provide a standard for determining what constitutes scientific data and are not intended to limit uses of shared data.

Finally, we have removed the expectation for digitizing scientific data. We encourage reasonable efforts to digitize data, recognizing that digitizing data may be a technical factor that may limit the sharing of data.

Timing of Submission of Data Management and Sharing Plans

Draft Policy: The Draft Policy proposed the submission of Plans at Just-in-Time for grants.

Public Comments: While we received a range of comments about timing of Plan submission, the majority were opposed to or requested further clarification about Just-in-Time Plan submission. Commenters were concerned about not having sufficient time to develop Plans and expressed concerns about the Plan revision process leading to delays in issuing awards. Others indicated that institutions would want to review Plans because they would ultimately be responsible for compliance, but a Just-in-Time Plan submission would not afford institutions sufficient time. A key practical concern with Just-in-Time Plan submission was difficulty submitting a budget at application that included requests for allowable data management and sharing costs prior to actually drafting the Plan. Commenters who favored submitting Plans at Just-in-Time frequently cited decreased burden on applicants, because with Just-in-Time, only those applicants likely to be funded would be required to submit Plans, rather than all applicants.

Final Policy: The final DMS Policy requires submission of a Plan for extramural grants at application. This approach is more conducive to achieving NIH's goal of promoting a culture in which data management and sharing are recognized to be an integral component of a biomedical research project, rather than an administrative or additive one. While NIH is aware that this approach places the requirement on the general pool of grant applicants rather than on those likely to be funded, it is precisely this approach of prospective planning for data management and sharing that NIH hopes to promote and that a number of commenters suggested is crucial for ensuring more regular planning for data

management and sharing. We were swayed by the logistical concerns expressed in comments, namely how applicants could submit budgets appropriately reflective of data management and sharing when not yet required to submit the Plan that is intended to help them consider these issues. In addition, the concerns about institutions having sufficient time to review Plans and potential logistical challenges in issuing timely awards was persuasive. This approach is also consistent with the 2018 Request for Information on Proposed Provisions of a Draft Data Management and Sharing Policy for NIH Funded or Supported Research, which proposed Plans be submitted with extramural grant applications. The responses to that proposal generally favored Plan submission at the time of application.

Assessment of Plans

Draft Policy: The Draft Policy proposed that NIH Program Staff in the funding NIH ICO assess Plans from extramural grants.

Public Comments: Many commenters supported peer review of Plans, noting their skill and that peer review of Plans would promote a cultural shift in favor of data sharing. Commenters also suggested that NIH Program Staff review may lead to more consistent Plan assessment and decrease peer reviewer burden.

Final Policy: The final DMS Policy maintains NIH Program Staff assessments of Plans' merits. However, peer reviewers may comment on the proposed budget for data management and sharing, although these comments will not impact the overall score. This approach balances the benefit of consistency afforded by NIH Program Staff review of Plans, review of updates, and compliance monitoring, with the opportunity for peer reviewers to comment on the requests for data management and sharing costs. Over time, and through these reviews, we hope to learn more about what constitutes reasonable costs for various data management and sharing activities across the NIH portfolio of research.

NIH ICO Consistency of Data Sharing Expectations

Draft Policy: The Draft Policy noted that NIH ICOs may supplement the Policy's expectations for Plans with their own complementary requirements to further advance their specific program or research goals. In addition, the Draft Policy stated the funding NIH ICOs may request additional or specific information to be included within Plans to meet expectations for data management and sharing in support of programmatic priorities or to expand the utility of the scientific data generated from the research.

Public Comments: In light of various existing NIH ICO data sharing policies, commenters expressed confusion around having potentially varying expectations in data sharing policy implementation across NIH. There were concerns about insufficient direction to NIH ICO and around a potentially uncoordinated variety of approaches. Commenters suggested guidance to facilitate NIH ICO consistency and suggested that NIH provide a centralized location of NIH ICO-specific expectations to help researchers navigate variations, particularly when subject to more than one NIH ICO's data sharing policies.

Final Policy: While the final DMS Policy's language on this issue has not substantively changed from that of the Draft Policy, we have heard the concerns and intend to address them during the period of implementation planning prior to the DMS Policy's Effective Date. NIH ICOs can, within certain bounds, meet their scientific, policy, and programmatic goals in different ways. As such, this Policy affords NIH ICOs the opportunity to meet the goals of this Policy in ways that enhance their respective science. However, we intend to promote consistency on some key tenets of the final DMS Policy, such as the requirement for submission of Plans and the timing of their submission. The DMS Policy represents the minimum requirements for the NIH, but NIH ICOs may expect more specificity in Plans. For example, NIH ICOs and Programs may wish to promote, via specific Funding Opportunity Announcements (FOAs) or across their research portfolios, the use of particular standards to enable interoperability of datasets and resources. We are appreciative of the suggestion about how to organize NIH ICO-specific expectations and will be working to ensure clear implementation materials for applicants and awardees.

Data Derived From Human Participants

Draft Policy: The Draft Policy acknowledged the applicability of laws, regulations, guidance, and policies that govern the conduct of research with human participants and how data derived from human participants should be used. It also described that Plans should indicate how human participants and data derived from them would be protected. Finally, the Draft Policy acknowledged that certain factors may limit the ability to share data and proposed that these factors be described in the Plan. Importantly, the Draft Policy did not propose any new expectations for the conduct of research with human participants.

Public Comments: Commenters expressed concerns about how to safeguard participant privacy and confidentiality when sharing data, with some requesting information on de-identification practices. Commenters also requested guidance on best practices in communicating data sharing in informed consent. They also stressed the importance of data sharing to maximize the contributions of those who volunteer to participate in NIH-funded studies. Some pointed to special populations with preferences on data sharing issues, such as AI/AN populations, and asked how sharing of data from these participant populations is expected to be handled.

In addition to the public comments submitted during the comment period, NIH received input from the Secretary's Advisory Committee on Human Research Protections (SACHRP).[3] SACHRP provided a set of recommendations relating to applying the DMS Policy to research with human participants, some of which we have incorporated into the final DMS Policy and are discussed below.

AI/AN communities provided input through various channels, including through letters sent to NIH as part of government-to-government communications. The Tribal Consultation process also led to valuable input that is informing NIH's implementation efforts, described further below.

Final Policy: As with the Draft Policy, the final DMS Policy does not introduce new requirements for protections for research with human participants. Existing laws (*e.g.,* Certificates of Confidentiality), regulations (*e.g.,* the Common Rule), and policies (*e.g.,* the NIH Genomic Data Sharing Policy) continue to apply. However, through this Policy and associated supplemental information and other activities, NIH promotes thoughtful practices regarding the treatment of data derived from human participants.

In response to public comments and SACHRP's recommendations on the Draft Policy, we have included in the final DMS Policy three concepts that we believe are important to emphasize for investigators as they think through how to engage prospective participants

[3] Attachment A—NIH Data Sharing Policy (September 2020) *https://www.hhs.gov/ohrp/sachrp-committee/recommendations/august-12-2020-attachment-a-nih-data-sharing-policy/index.html.*

regarding what is expected to happen with the data they contribute and, downstream, how best to respect these contributions. First, we encourage investigators to consider, while developing their Plans, how to address data management and sharing in the informed consent process, such that prospective participants will understand what is expected to happen with their data. This planning will serve investigators as they develop their Plans, because some of the Plan elements prompt investigators to outline anticipated factors that might affect the ability to share and preserve scientific data, such as any limitations arising from the informed consent process. NIH also intends to develop resources to help researchers and institutions in communicating the intent to share data with prospective research participants. Second, we note that any limitations on subsequent use of data (which may apply to non-human data as well) should be communicated to those individuals or entities preserving and sharing the scientific data. This ensures that factors that may affect subsequent use of data are properly communicated and will travel with the data. Finally, we highlight the importance of researchers considering whether, in choosing where and how to make their data available (if not already specified by an FOA or funding NIH ICO expectation), access to scientific data derived from humans should be controlled, even if de-identified and lacking explicit limitations on subsequent use.

We note that data carrying explicit limitations on subsequent use require access controls to manage such limitations. This approach honors the wishes and autonomy of the participants who contributed their data and is important to uphold, even if the data are de-identified. In addition, investigators should consider whether access to data even without such limitations should be controlled. SACHRP identified concerns regarding re-identification of otherwise de-identified data, and indeed technological advances and increasing interoperability among data resources, while providing opportunities for new analyses, present identifiability concerns that are widely acknowledged. In response to concerns expressed in public comments and by SACHRP, NIH may support development of resources to assist researchers and institutions in determining how to appropriately de-identify data from human participants, as well as for communicating data sharing in informed consent.

The final DMS Policy does not preclude the open sharing of data from human participants in ways that are consistent with consent practices, established norms, and applicable law. For example, open sharing of a compilation of a population's genotype at a particular locus may be an acceptable and established practice if consistent with informed consent. And importantly, we are aware that some patient communities prioritize openness to speed scientific progress and discovery. Nothing in the final DMS Policy is intended to prevent these approaches, as long as participants are appropriately informed and prospectively agree to them.

We emphasize that respecting participant autonomy and maintaining privacy of participants and confidentiality of their data can be consistent with data sharing. Through the final DMS Policy, we outline a balance that accommodates various responsible approaches that meet data sharing expectations and honor appropriate limitations in sharing. In addition, while the DMS Policy sets the expectation that, through their Plans, researchers maximize the appropriate sharing of scientific data (acknowledging factors that may limit such sharing, as discussed above), the DMS Policy does not expect that the informed consent given by participants to be obtained in any particular way, such as through broad consent.

In response to input from Tribal Nations, the final DMS Policy clarifies agency respect for Tribal sovereignty in the absence of written Tribal laws or polices. To address some of the other themes and comments we heard from both AI/AN communities as well as public commenters who expressed interest in agency efforts to promote responsible and respectful engagement of AI/AN populations, we are developing supplemental information for researchers who wish to work with AI/AN communities. Such guidance is expected to encourage researchers to (among other topics): thoughtfully consider the unique data sharing concerns of AI/AN communities; respectfully negotiate agreements for data use with Tribal Nations; and enhance researcher awareness of processes Tribal Nations use to review prospective research. NIH will seek input from AI/AN communities on the development of the guidance, to ensure it serves the goals of guiding researchers while taking into account Tribal preferences and values.

When Data Are Expected To Be Shared

Draft Policy: The Draft Policy proposed that shared scientific data should be made accessible in a timely manner for use by the research community and the broader public.

Public Comments: While commenters appreciated the flexibility afforded by this approach, they also expressed concern about its ambiguity. Some suggested timing of data sharing be connected to publication. Commenters also suggested NIH should specify outer bounds for timing of data sharing in the absence of a publication. Overall, commenters expressed the desire for more clarity.

Final Policy: The final DMS Policy states that ''[s]hared scientific data should be made accessible as soon as possible, and no later than the time of an associated publication, or the end of the award/support period, whichever comes first.'' This statement provides more clarity than the Draft Policy through outer bounds to guide researchers in when to make the scientific data available. It clarifies that publication triggers release of the data that underlie that publication (indeed, publishers often require the same). But it also recognizes that research does not always lead to a publication that would itself trigger the release of data. Importantly, the final DMS Policy is designed to increase the sharing of scientific data, regardless of whether a publication is produced. Important research may never be published for a variety of reasons, not least of which because the results did not prove the hypothesis. However, we believe the scientific data underlying all NIH-funded research to be of importance, particularly to serve the purposes of accountability and transparency. Data that do not form the basis of a publication produced during the award period should be shared by the end of the award period. A single research project may take advantage of both approaches. Namely, researchers may share data underlying publication during the period of award but may share other data that have not yet led to a publication by the end of the award period.

How Long Data Should Be Available

Draft Policy: The Draft Policy stated that ''NIH encourages shared scientific data to be made available as long as it is deemed useful to the research community or the public.''

Public Comments: Commenters expressed uncertainty about how the concept of usefulness would be

determined, and who would determine usefulness.

Final Policy: We have indicated a framework for helping researchers think through a minimum time period for data availability. Providing this framework is anticipated to help researchers both develop Plans and also budget accordingly for data management and sharing costs, when needed. Existing requirements and expectations set forth through, for example, applicable record retention requirements, repository policies, and journal policies may guide researchers as they seek to define minimal periods for data availability. However, we encourage researchers to propose longer time periods that may be informed by other factors, such as anticipated value of the dataset for the scientific community and the public.

Where To Share Scientific Data

Draft Policy: The Draft Policy stated that ''NIH encourages the use of established repositories for preserving and sharing scientific data.''

Public Comments: Commenters supported the use of established repositories for preserving and sharing scientific data.

Final Policy: The final DMS Policy strongly encourages the use of established repositories to the extent possible. This reflects NIH's preference that scientific data be shared and preserved through repositories, rather than kept only by the researcher or institution and provided on request, with the recognition that this is not always a practical or even a preferred approach. For example, we recognize and respect that AI/AN communities, in particular, may wish to manage, preserve, and share their own data. We support efforts that enable AI/AN communities to prioritize research opportunities and to ensure sufficient protections on scientific data generated from such research. In addition, we have released the Supplemental Information to the NIH Policy for Data Management and Sharing: Selecting a Repository for Data Resulting from NIH-Supported Research, which will aid researchers as they choose suitable repositories for the preservation and sharing of data. This supplemental information is discussed in more detail below.

Discussion of Public Comments on the Draft Supplemental Information: Elements of an NIH Data Management and Sharing Plan

Page Limit and Template for Plans

Draft Supplemental Information: The Draft Supplemental Information suggested a limit for Plan length of two pages or less. It did not indicate whether template Plans would be provided.

Public Comments: Commenters expressed that two pages is insufficient to describe approaches for data management and sharing, particularly for larger, more complicated projects, such as those involving consortia. In addition, commenters suggested that NIH provide a template for Plans, with Plans being machine-readable.

Final Supplemental Information: We understand the concern about describing plans for data management and sharing in two pages. In the final supplemental information, we have noted the elements to be addressed in two pages or less, indicating that these descriptions need not be long narratives. In addition, short Plans are anticipated to limit researcher burden.

The Acceptability of ''To Be Determined'' as a Response to Plan Elements

Draft Supplemental Information: The Draft Supplemental Information proposed that if certain elements of a Plan have not been determined by the time of Plan submission, an entry of ''to be determined'' may be acceptable if a justification is provided along with a timeline or appropriate milestone at which a determination will be made.

Public Comments: Commenters disagreed with allowing responses of ''to be determined'' at initial Plan submission.

Final Supplemental Information: The final Supplemental Information eliminates the language that a response of ''to be determined'' is acceptable. We do not expect researchers to necessarily have all details at the application stage, but we encourage researchers to fill out Plans to the best of their knowledge and ability, so the Plans may be appropriately assessed. We also note that adherence with NIH ICO-approved Plans is a requirement of the final DMS Policy. As indicated in the final DMS Policy, researchers will have opportunities to update their Plans throughout the course of their awards, subject to NIH ICO approval.

The Use of Persistent Unique Identifiers (PIDs)

Draft Supplemental Information: The Draft Supplemental Information asked for researchers to indicate how data will be findable and whether a persistent unique identifier or other standard indexing tools will be used.

Public Comments: Commenters expressed support for PIDs, explaining that researchers are incentivized to use PIDs because they enable effective citation. They also noted PIDs are a way to track data sharing compliance.

Final Supplemental Information: The final Supplemental Information asks researchers to describe how the scientific data will be findable and identifiable, *i.e.,* via a persistent unique identifier or other standard indexing tools. This wording change is meant to highlight the importance of using a PID or other standard indexing tool so the data are findable, which is a key component of the FAIR (Findable, Accessible, Interoperable, and Re-usable) Principles. PIDs are also listed as a desirable characteristic of data repositories in the Supplemental Information to the NIH Policy for Data Management and Sharing: Selecting a Repository for Data Resulting from NIH-Supported Research.

Data Security

Draft Supplemental Information: The Draft Supplemental Information proposed that researchers address provisions for maintaining the security and integrity of the scientific data, such as through encryption and back-ups. It also noted that data sharing should be consistent with security as well as other factors.

Public Comments: Commenters emphasized the importance of data security.

Final Supplemental Information: We have removed the prompt for researchers to address provisions related to the security of scientific data. While we agree with the importance of appropriate data security measures, we believe that technical provisions regarding data security are more appropriately addressed by the institutions and repositories preserving and sharing the scientific data. The Supplemental Information to the NIH Policy for Data Management and Sharing: Selecting a Repository for Data Resulting from NIH-Supported Research (discussed in more detail below) outlines characteristics of suitable repositories, and we do not wish to burden the funded community with describing in-depth the data security processes of the data repositories preserving and sharing the data generated by their research. While data may remain with an institution prior to submission to a data repository, the DMS Policy is not designed to set any new standards for institutional data security practices.

Discussion of Public Comments on the Draft Supplemental Information: Allowable Costs for Data Management and Sharing

Timelines for Using Funds for Data Management and Sharing Activities

Draft Supplemental Information: The Draft Guidance noted that budget requests to the NIH may include costs for preserving and sharing data through repositories that charge recurring fees, however it did not specify timelines by which funds allotted for data management and sharing must be spent or how to account for paying fees to data repositories storing data after the end of the performance period.

Public Comments: Commenters generally supported the proposal but sought clarification on whether funds may be used to pre-pay fees for long-term data availability. Commenters also asked whether these funds could cover personnel expenses.

Final Supplemental Information: Personnel costs required to perform the types of data management and sharing activities described in the final Supplemental Information are allowable. Regarding the availability of data beyond the end of the project, which is crucial to achieving the goals of the DMS Policy, the final Supplemental Information clarifies that fees for long-term data preservation and sharing are allowable, but funds for these activities must be spent during the performance period, even for scientific data and metadata preserved and shared beyond the award period. NIH funds cannot legally be spent after the award period.

Discussion of Requests for Additional Guidance and Information

Public commenters requested more clarity not only on information in provided materials, but about issues key to implementation. One common theme was a request for guidance about how to choose a data repository, with some requesting a list of suitable repositories. NIH does not intend to provide a comprehensive list of suitable repositories outside of those supported or stewarded by NIH.[4] However, NIH recognizes the need for providing a way to help researchers determine what characteristics make for a suitable repository for the preservation and sharing of data from NIH-funded research. As such, we are releasing the Supplemental Information to the NIH Policy for Data Management and Sharing: Selecting a Repository for Data Resulting from NIH-Supported Research. This document stems in part from an interagency effort led by the White House OSTP to outline desirable characteristics of preserving and sharing data from federally funded research, released as the Request for Public Comment on Draft Desirable Characteristics of Repositories for Managing and Sharing Data Resulting From Federally Funded Research (85 FR 3085). The purpose was also to promote consistency across federal agencies to reduce researcher burden. The public comments on this document also informed the development of the Supplemental Information.

The Supplemental Information to the NIH Policy for Data Management and Sharing: Selecting a Repository for Data Resulting from NIH-Supported Research includes a process to help researchers determine suitable repositories by providing relevant characteristics, noting that NIH ICOs may have identified preferred repositories in FOAs or through other announcements.

Concluding Points

As the DMS Policy is released, the world is in the midst of the COVID–19 pandemic. The recognition that more open sharing can lead to faster advances and treatments has led to an unprecedented worldwide effort to openly share publications and data related to both SARS–CoV–2 (the novel coronavirus that causes COVID–19) and coronaviruses more generally. While this is a specific example of an urgent public health need, patients, families, and patient advocacy groups consider the diseases and conditions that affect them to be of equal urgency, as do those who research these diseases and conditions and treat affected patients. With public input, NIH has worked to develop and refine this DMS Policy, the goal of which is to increase the sharing of scientific data generated from NIH-funded research to ultimately enhance health, lengthen life, and reduce illness and disability.

In addition to the Supplemental Information discussed here, we intend to provide frequently asked questions and other information to aid in implementation, prior to the DMS Policy's Effective Date. We recognize that some fields and researchers plan for sharing and prepare data for preservation and sharing as a regular practice. For others, these activities may be new. We anticipate a period of learning and an evolution of implementation practices. Further, it is important to acknowledge that NIH recognizes that expectations for robust data management and sharing practices will need to be met with investments in and evolution of accompanying data infrastructure. We look forward to working with applicants and the funded community as they prepare to meet the DMS Policy's requirements and expectations, as we all move toward a future in which data sharing is a community norm.

The final DMS policy is set forth below. Upon its Effective Date, the DMS Policy replaces the 2003 NIH Data Sharing Policy.

NIH Policy for Data Management and Sharing

Section I. Purpose

The National Institutes of Health (NIH) Policy for Data Management and Sharing (herein referred to as the DMS Policy) reinforces NIH's longstanding commitment to making the results and outputs of NIH-funded research available to the public through effective and efficient data management and data sharing practices. Data sharing enables researchers to rigorously test the validity of research findings,[5] strengthen analyses through combined datasets, reuse hard-to-generate data, and explore new frontiers of discovery. In addition, NIH emphasizes the importance of good data management practices, which provide the foundation for effective data sharing and improve the reproducibility and reliability of research findings. NIH encourages data management and data sharing practices consistent with the FAIR data principles.[6]

Under the DMS Policy, NIH requires researchers to prospectively plan for how scientific data will be preserved and shared through submission of a Data Management and Sharing Plan (Plan). Upon NIH approval of a Plan, NIH expects researchers and institutions to implement data management and sharing practices as described. The DMS Policy is intended to establish expectations for Data Management and Sharing Plans, which applicable NIH Institutes, Centers and Offices (ICO) may supplement as appropriate.

Section II. Definitions

For the purposes of the DMS Policy, terms are defined as follows:

Scientific Data: The recorded factual material commonly accepted in the

[4] For an example of NIH-supported or -stewarded repositories see Open Domain-Specific Data Sharing Repositories (September 2020) *https://www.nlm.nih.gov/NIHbmic/domain_specific_repositories.html.*

[5] NIH Rigor and Reproducibility *https://www.nih.gov/research-training/rigor-reproducibility.*

[6] Wilkinson, M., Dumontier, M. et al, The FAIR Guiding Principles for Scientific Data Management and Stewardship (March 2016) *https://www.nature.com/articles/sdata201618.*

scientific community as of sufficient quality to validate and replicate research findings, regardless of whether the data are used to support scholarly publications. Scientific data *do not include* laboratory notebooks, preliminary analyses, completed case report forms, drafts of scientific papers, plans for future research, peer reviews, communications with colleagues, or physical objects, such as laboratory specimens.

Data Management: The process of validating, organizing, protecting, maintaining, and processing scientific data to ensure the accessibility, reliability, and quality of the scientific data for its users.

Data Sharing: The act of making scientific data available for use by others (*e.g.,* the larger research community, institutions, the broader public), for example, via an established repository.

Metadata: Data that provide additional information intended to make scientific data interpretable and reusable (*e.g.,* date, independent sample and variable construction and description, methodology, data provenance, data transformations, any intermediate or descriptive observational variables).

Data Management and Sharing Plan (Plan): A plan describing the data management, preservation, and sharing of scientific data and accompanying metadata.

Section III. Scope

The DMS Policy applies to all research, funded or conducted in whole or in part by NIH, that results in the generation of scientific data. This includes research funded or conducted by extramural grants, contracts, Intramural Research Projects, or other funding agreements regardless of NIH funding level or funding mechanism. The DMS Policy does not apply to research and other activities that do not generate scientific data, including training, infrastructure development, and non-research activities.

Section IV. Effective Date(s)

The effective date of the DMS Policy is January 25, 2023, including for:

- Competing grant applications that are submitted to NIH for the January 25, 2023 and subsequent receipt dates;
- Proposals for contracts that are submitted to NIH on or after January 25, 2023;
- NIH Intramural Research Projects conducted on or after January 25, 2023; and
- Other funding agreements (*e.g.,* Other Transactions) that are executed on or after January 25, 2023, unless otherwise stipulated by NIH.

Section V. Requirements

The DMS Policy requires:

- Submission of a Data Management and Sharing Plan outlining how scientific data and any accompanying metadata will be managed and shared, taking into account any potential restrictions or limitations.
- Compliance with the awardee's plan as approved by the NIH ICO.

The NIH ICO may request additional or specific information to be included within the Plan in order to meet expectations for data management and data sharing in support of programmatic priorities or to expand the utility of the scientific data generated from the research. Costs associated with data management and data sharing may be allowable under the budget for the proposed project (see Supplemental Information to the NIH Policy for Data Management and Sharing: Allowable Costs for Data Management and Sharing).

Section VI. Data Management and Sharing Plans

Researchers planning to generate scientific data are required to submit a Plan to the funding NIH ICO as part of the Budget Justification section of the application for extramural awards, as part of the technical evaluation for contracts, as determined by the Intramural Research Program for Intramural Research Projects consistent with the objectives of this Policy, or prior to release of funds for other funding agreements. Plans should explain how scientific data generated by research projects will be managed and which of these scientific data and accompanying metadata will be shared. If Plan revisions are necessary (*e.g.,* new scientific direction, a different data repository, or a timeline revision), Plans should be updated by researchers and reviewed by the NIH ICO during regular reporting intervals or sooner. Plans from NIH-funded or conducted research may be made publicly available and should not include proprietary or private information.[7]

Plan Elements: NIH has developed Supplemental Information to the NIH Policy for Data Management and Sharing: Elements of an NIH Data Management and Sharing Plan that describes recommended elements to address in Plans.

Plan Assessment: The NIH ICO will assess the Plan, through the following processes:

- Extramural Awards: Plans will undergo programmatic assessment by NIH as determined by the proposed NIH ICO. NIH encourages potential awardees to work with NIH staff to address any potential questions regarding Plan development prior to submission.
- Contracts: Plans will be included as part of the technical evaluation performed by NIH staff.
- Intramural Research Projects: Plans will be assessed in a manner determined to be appropriate by the Intramural Research Program.
- Other funding agreements: Plans will be assessed in the context of other funding agreement mechanisms (*e.g.,* Other Transactions).

Section VII. Managing and Sharing Scientific Data

NIH expects that in drafting Plans, researchers will maximize the appropriate sharing of scientific data, acknowledging certain factors (*i.e.,* legal, ethical, or technical) that may affect the extent to which scientific data are preserved and shared. Any potential limitations on subsequent data use should be communicated to individuals or entities (*e.g.,* data repository managers) that will preserve and share the scientific data. The NIH ICO will assess whether Plans appropriately consider and describe these factors.

Considerations for Scientific Data Derived from Human Participants: NIH prioritizes the responsible management and sharing of scientific data derived from human participants. Applicable federal, Tribal, state, and local laws, regulations, statutes, guidance, and institutional policies govern research involving human participants and the sharing and use of scientific data derived from human participants. NIH also respects Tribal sovereignty in the absence of written Tribal laws or polices. The DMS Policy is consistent with federal regulations for the protection of human research participants and other NIH expectations for the use and sharing of scientific data derived from human participants, including the NIH's 2014 Genomic Data Sharing (GDS) Policy, 2015 Intramural Research Program Human Data Sharing Policy, and 45 CFR 46. Researchers proposing to generate scientific data derived from human participants should outline in their Plans how privacy, rights, and confidentiality of human research participants will be protected (*i.e.,* through de-identification, Certificates of Confidentiality, and other protective measures).

[7] NIH Grants Policy Statement 2.3.11 Availability and Confidentiality of Information (October 2019) *https://grants.nih.gov/grants/policy/nihgps/html5/section_2/2.3.11_availability_and_confidentiality_of_information.htm.*

NIH strongly encourages researchers to plan for how data management and sharing will be addressed in the informed consent process, including communicating with prospective participants how their scientific data are expected to be used and shared. Researchers should consider whether access to scientific data derived from humans, even if de-identified and lacking explicit limitations on subsequent use, should be controlled.

Data Repository Selection: NIH strongly encourages the use of established repositories to the extent possible for preserving and sharing scientific data.[8] The Supplemental Information to the NIH Policy for Data Management and Sharing: Selecting a Repository for Data Resulting from NIH-Supported Research assists researchers in selecting a suitable data repository(ies) or cloud-computing platform.

Data Preservation and Sharing Timelines: Shared scientific data should be made accessible as soon as possible, and no later than the time of an associated publication, or the end of performance period, whichever comes first. Researchers are encouraged to consider relevant requirements and expectations (*e.g.,* data repository policies, award record retention requirements, journal policies) as guidance for the minimum time frame that scientific data should be made available, which researchers may extend.

Section VIII. Compliance and Enforcement

During the Funding or Support Period

During the funding period, compliance with the Plan will be determined by the NIH ICO. Compliance with the Plan, including any Plan updates, may be reviewed during regular reporting intervals (*e.g.,* at the time of annual Research Performance Progress Reports (RPPRs)).

- Extramural Awards: The Plan will become a Term and Condition of the Notice of Award. Failure to comply with the Terms and Conditions may result in an enforcement action, including additional special terms and conditions or termination of the award, and may affect future funding decisions.
- Contracts: The Plan will become a Term and Condition of the Award, and compliance with and enforcement of the Plan will be consistent with the award and the Federal Acquisition Regulations, as applicable.
- Intramural Research Projects: Compliance with and enforcement of the Plan will be consistent with applicable NIH policies established by the NIH Office of Intramural Research and the NIH ICO.
- Other funding agreements: Compliance with and enforcement of the Plan will be consistent with applicable NIH policies.

Post Funding or Support Period

After the end of the funding period, non-compliance with the NIH ICO-approved Plan may be taken into account by NIH for future funding decisions for the recipient institution (*e.g.,* as authorized in the NIH Grants Policy Statement, Section 8.5, Special Award Conditions, and Remedies for Noncompliance (Special Award Conditions and Enforcement Actions)).

Supplemental Information to the NIH Policy for Data Management and Sharing: Elements of an NIH Data Management and Sharing Plan

The final NIH Policy for Data Management and Sharing requires applicants to submit a Data Management and Sharing Plan (Plan) for any NIH-funded or conducted research that will generate scientific data. This supplemental information outlines the elements to be addressed in a Plan within two pages or less. A Plan should reflect the proposed approach to data management and sharing at the time it is prepared and be updated during the course of the award/support period to reflect any changes in the management and sharing of scientific data (*e.g.,* new scientific direction, new repository option, timeline revision). For some programs and data types, NIH and/or NIH ICOs have developed specific data sharing expectations (*e.g.,* scientific data to share, relevant standards, repository selection, timelines) that apply and should be reflected in a Plan. When no additional NIH and/or NIH ICO data sharing expectations apply, researchers should propose their own approaches to data management and sharing in a Plan. NIH encourages data management and sharing practices to be consistent with the FAIR (Findable, Accessible, Interoperable, and Reusable) data principles and reflective of practices within specific research communities. NIH recommends addressing all elements described below.

Data Type: Briefly describe the scientific data to be managed, preserved, and shared, including:

- A general summary of the types and estimated amount of scientific data to be generated and/or used in the research. Describe data in general terms that address the type and amount/size of scientific data expected to be collected and used in the project (*e.g.,* 256-channel EEG data and fMRI images from ~50 research participants). Descriptions may indicate the data modality (*e.g.,* imaging, genomic, mobile, survey), level of aggregation (*e.g.,* individual, aggregated, summarized), and/or the degree of data processing that has occurred (*i.e.,* how raw or processed the data will be).
- A description of which scientific data from the project will be preserved and shared. NIH does not anticipate that researchers will preserve and share all scientific data generated in a study. Researchers should decide which scientific data to preserve and share based on ethical, legal, and technical factors that may affect the extent to which scientific data are preserved and shared. Provide the rationale for these decisions.
- A brief listing of the metadata, other relevant data, and any associated documentation (*e.g.,* study protocols and data collection instruments) that will be made accessible to facilitate interpretation of the scientific data.

Related Tools, Software and/or Code: An indication of whether specialized tools are needed to access or manipulate shared scientific data to support replication or reuse, and name(s) of the needed tool(s) and software. If applicable, specify how needed tools can be accessed, (*e.g.,* open source and freely available, generally available for a fee in the marketplace, available only from the research team) and, if known, whether such tools are likely to remain available for as long as the scientific data remain available.

Standards: An indication of what standards will be applied to the scientific data and associated metadata (*i.e.,* data formats, data dictionaries, data identifiers, definitions, unique identifiers, and other data documentation). While many scientific fields have developed and adopted common data standards, others have not. In such cases, the Plan may indicate that no consensus data standards exist for the scientific data and metadata to be generated, preserved, and shared.

Data Preservation, Access, and Associated Timelines: Plans and timelines for data preservation and access, including:

- The name of the repository(ies) where scientific data and metadata arising from the project will be archived. NIH has provided additional information to assist in selecting suitable repositories for scientific data resulting from funded research.

[8] NIH Strategic Plan for Data Science (June 2018) *https://datascience.nih.gov/sites/default/files/NIH_Strategic_Plan_for_Data_Science_Final_508.pdf.*

• How the scientific data will be findable and identifiable, *i.e.,* via a persistent unique identifier or other standard indexing tools.

• When the scientific data will be made available to other users (*i.e.,* the larger research community, institutions, and/or the broader public) and for how long. NIH encourages scientific data be shared as soon as possible, and no later than time of an associated publication or end of the performance period, whichever comes first. Researchers are encouraged to consider relevant requirements and expectations (*e.g.,* data repository policies, award record retention requirements, journal policies) as guidance for the minimum time frame scientific data should be made available. NIH encourages researchers to make scientific data available for as long as they anticipate it being useful for the larger research community, institutions, and/or the broader public. Identify any differences in timelines for different subsets of scientific data to be shared.

Access, Distribution, or Reuse Considerations: NIH expects that in drafting Plans, researchers maximize the appropriate sharing of scientific data generated from NIH-funded or conducted research, consistent with privacy, security, informed consent, and proprietary issues. Describe any applicable factors affecting subsequent access, distribution, or reuse of scientific data related to:

• Informed consent (*e.g.,* disease-specific limitations, particular communities' concerns).

• Privacy and confidentiality protections (*i.e.,* de-identification, Certificates of Confidentiality, and other protective measures) consistent with applicable federal, Tribal, state, and local laws, regulations, and policies.

• Whether access to scientific data derived from humans will be controlled (*i.e.,* made available by a data repository only after approval).

• Any restrictions imposed by federal, Tribal, or state laws, regulations, or policies, or existing or anticipated agreements (*e.g.,* with third party funders, with partners, with Health Insurance Portability and Accountability Act (HIPAA) covered entities that provide Protected Health Information under a data use agreement, through licensing limitations attached to materials needed to conduct the research).

• Any other considerations that may limit the extent of data sharing.

Oversight of Data Management and Sharing: Indicate how compliance with the Plan will be monitored and managed, frequency of oversight, and by whom (*e.g.,* titles, roles).

Supplemental Information to the NIH Policy for Data Management and Sharing: Allowable Costs for Data Management and Sharing

NIH recognizes that making data accessible and reusable for other users may incur costs. To assist individuals and entities subject to the final NIH Policy for Data Management and Sharing, this supplemental information outlines categories of allowable NIH costs associated with data management and sharing.

All allowable costs submitted in budget requests must be incurred (*e.g.,* curation fees, data repository fees) during the performance period, even for scientific data and metadata preserved and shared beyond the award period. Consistent with 45 CFR 75.403 and the NIH Grants Policy Statement Section 7.4, budget requests must not include infrastructure costs that are included in institutional overhead (*e.g.,* Facilities and Administrative costs) or costs associated with the routine conduct of research. Costs associated with collecting or otherwise gaining access to research data (*e.g.,* data access fees) are considered costs of doing research and should not be included in scientific data management and sharing budgets. Costs may not be double charged or inconsistently charged as both direct and indirect costs.

Reasonable, allowable costs may be included in NIH budget requests when associated with:

1. *Curating data and developing supporting documentation*, including formatting data according to accepted community standards; de-identifying data; preparing metadata to foster discoverability, interpretation, and reuse; and formatting data for transmission to and storage at a selected repository for long-term preservation and access.

2. Local data management considerations, such as unique and specialized information infrastructure necessary to provide local management and preservation (*e.g.,* before deposit into an established repository).

3. *Preserving and sharing data through established repositories,* such as data deposit fees necessary for making data available and accessible. For example, if a Data Management and Sharing Plan proposes preserving and sharing scientific data for 10 years in an established repository with a deposition fee, the cost for the entire 10-year period must be paid prior to the end of the period of performance. If the Plan proposes deposition to multiple repositories, costs associated with each proposed repository may be included.

Supplemental Information to the NIH Policy for Data Management and Sharing: Selecting a Repository for Data Resulting from NIH-Supported Research

This supplemental information is intended to help researchers choose data repositories suitable for the preservation and sharing of data (*i.e.,* scientific data and metadata) resulting from NIH-funded and conducted research. NIH promotes the use of established data repositories because deposit in a quality data repository generally improves the FAIRness (Findable, Accessible, Interoperable, and Re-usable) of the data.

While NIH supports many data repositories, it will not necessarily provide data repositories to preserve and share all data resulting from the research it funds. The broader repository ecosystem for biomedical data includes data repositories supported by other organizations, both public and private. NIH anticipates that the broader repository ecosystem will continue to evolve over time, providing different options for researchers as their data sharing needs continue to evolve.

Similarly, while discipline or data-type specific repositories may not exist for every type of data resulting from NIH-funded or conducted research, the broader repository ecosystem provides suitable data repositories to accommodate scientific data generated from all of NIH's funded or conducted research projects. Researchers may wish to consult experts in their own institutions (*e.g.,* librarians, data managers) for assistance in selecting among data repositories.

NIH encourages researchers to select data repositories that exemplify the desired characteristics (see lists I. and II. below relating to data repository characteristics), including when a data repository is supported or provided by a cloud-computing or high-performance computing platform. These desired characteristics aim to ensure that data are managed and shared in ways that are consistent with FAIR data principles.

Selecting a Data Repository

1. For some programs and types of data, NIH and/or NIH ICO policy(ies) and FOAs identify particular data repositories (or sets of repositories) to be used to preserve and share data. For data generated from research subject to such policies or funded under such FOAs, researchers should use the designated data repository(ies).

2. For data generated from research for which no data repository is specified by NIH or the NIH ICO (as described

above), researchers are encouraged to select a data repository that is appropriate for the data generated from the research project and is in accordance with the desired characteristics, taking into consideration the following guidance:

A. Primary consideration should be given to data repositories that are discipline or data-type specific to support effective data discovery and reuse. NIH makes a list of such data repositories available (see *https://www.nlm.nih.gov/NIHbmic/domain_specific_repositories.html*).

B. If no appropriate discipline or data-type specific repository is available, researchers should consider a variety of other potentially suitable data sharing options:

i. Small datasets (up to 2 GB in size) may be included as supplementary material to accompany articles submitted to PubMed Central (see *https://www.ncbi.nlm.nih.gov/pmc/about/guidelines/#suppm*).

ii. Data repositories, including generalist repositories (see *https://www.nlm.nih.gov/NIHbmic/generalist_repositories.html*) or institutional repositories, that make data available to the larger research community, institutions, or the broader public.

iii. Large datasets may benefit from cloud-based data repositories for data access, preservation, and sharing.

I. Desirable Characteristics for All Data Repositories

The characteristics in this section are relevant to all repositories that manage and share data resulting from Federally funded research:

A. Unique Persistent Identifiers: Assigns datasets a citable, unique persistent identifier (PID), such as a digital object identifier (DOI) or accession number, to support data discovery, reporting (*e.g.,* of research progress), and research assessment (*e.g.,* identifying the outputs of federally funded research). The unique PID points to a persistent landing page that remains accessible even if the dataset is de-accessioned or no longer available.

B. Long-Term Sustainability: Has a plan for long-term management of data, including maintaining integrity, authenticity, and availability of datasets; building on a stable technical infrastructure and funding plans; and having contingency plans to ensure data are available and maintained during and after unforeseen events.

C. Metadata: Ensures datasets are accompanied by metadata to enable discovery, reuse, and citation of datasets, using schema that are appropriate to, and ideally widely used across, the community(ies) the repository serves. Domain-specific repositories would generally have more detailed metadata than generalist repositories.

D. Curation and Quality Assurance: Provides, or has a mechanism for others to provide, expert curation and quality assurance to improve the accuracy and integrity of datasets and metadata.

E. Free and Easy Access: Provides broad, equitable, and maximally open access to datasets and their metadata free of charge in a timely manner after submission, consistent with legal and ethical limits required to maintain privacy and confidentiality, Tribal sovereignty, and protection of other sensitive data.

F. Broad and Measured Reuse: Makes datasets and their metadata available with broadest possible terms of reuse; and provides the ability to measure attribution, citation, and reuse of data (*e.g.,* through assignment of adequate metadata, unique PIDs).

G. Clear Use Guidance: Provides accompanying documentation describing terms of dataset access and use (*e.g.,* particular licenses, need for approval by a data use committee).

H. Security and Integrity: Has documented measures in place to meet generally accepted criteria for preventing unauthorized access to, modification of, or release of data, with levels of security that are appropriate to the sensitivity of data.

I. Confidentiality: Has documented capabilities for ensuring that administrative, technical, and physical safeguards are employed to comply with applicable confidentiality, risk management, and continuous monitoring requirements for sensitive data.

J. Common Format: Allows datasets and metadata downloaded, accessed, or exported from the repository to be in widely used, preferably non-proprietary, formats consistent with those used in the community(ies) the repository serves.

K. Provenance: Has mechanisms in place to record the origin, chain of custody, and any modifications to submitted datasets and metadata.

L. Retention Policy: Provides documentation on policies for data retention within the repository.

II. Additional Considerations for Repositories Storing Human Data (even if de-identified)

The additional characteristics outlined in this section are intended for repositories storing human data, which are also expected to exhibit the characteristics outlined in Section I, particularly with respect to confidentiality, security, and integrity. These characteristics also apply to repositories that store only de-identified human data, as preventing re-identification is often not possible, thus requiring additional considerations to protect privacy and security.

A. Fidelity to Consent: Employs documented procedures to restrict dataset access and use to those that are consistent with participant consent (such as for use only within the context of research on a specific disease or condition) and changes in consent.

B. Restricted Use Compliant: Employs documented procedures to communicate and enforce data use restrictions, such as preventing reidentification or redistribution to unauthorized users.

C. Privacy: Implements and provides documentation of appropriate approaches (*e.g.,* tiered access, credentialing of data users, security safeguards against potential breaches) to protect human subjects' data from inappropriate access.

D. Plan for Breach: Has security measures that include a response plan for detected data breaches.

E. Download Control: Controls and audits access to and download of datasets (if download is permitted).

F. Violations: Has procedures for addressing violations of terms-of-use by users and data mismanagement by the repository.

G. Request Review: Makes use of an established and transparent process for reviewing data access requests.

Dated: October 19, 2020.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2020–23674 Filed 10–29–20; 8:45 am]

BILLING CODE 4140–01–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; NST–1 Additional Review.

Date: December 3, 2020.

Time: 1:00 p.m. to 5:00 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: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS, NIH, NSC, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, (301) 496–0660, *benzingw@mail.nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS Research Education R25.

Date: December 11, 2020.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NSC Building, 6001 Executive Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Delany Torres, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS, Neuroscience Center Building (NSC), 6001 Executive Blvd., Suite 3208, Bethesda, MD 20892, *delany.torressalazar@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: October 26, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–24075 Filed 10–29–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 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: Heart, Lung, and Blood Initial Review Group; Heart, Lung, and Blood Program Project Review Committee.

Date: December 2, 2020.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20814 (Virtual Meeting).

Contact Person: Melissa H Nagelin, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6705 Rockledge Drive, Room 208–R, Bethesda, MD 20892, 301–827–7951, *nagelinmh2@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 27, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–24079 Filed 10–29–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 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 Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI SBIR Phase IIB Small Market and Bridge Awards.

Date: December 2, 2020.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20814, (Virtual Meeting).

Contact Person: Susan Wohler Sunnarborg, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National, Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–Z, Bethesda, MD 20892, (301) 827–7987, *susan.sunnarborg@nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; CATALYZE: ENABLING TECHNOLOGIES.

Date: December 2, 2020.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20814, (Virtual Meeting).

Contact Person: Kristin Goltry, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 209–B, Bethesda, MD 20892, (301) 435–0297, *goltrykl@mail.nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; CATALYZE: PRODUCT DEFINITION.

Date: December 3, 2020.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20814, (Virtual Meeting).

Contact Person: Kristin Goltry, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 209–B, Bethesda, MD 20892, (301) 435–0297, *goltrykl@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 27, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–24078 Filed 10–29–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, And Blood Institute; Notice of Closed Meeting

Pursuant to section 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: Heart, Lung, and Blood Initial Review Group NHLBI Institutional Training Mechanism Review Committee.

Date: December 11, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD, 20892 (Virtual Meeting).

Contact Person: Lindsay M Garvin, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–Y, Bethesda, MD 20892, (301) 827–7911, *lindsay.garvin@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 27, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–24080 Filed 10–29–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0034]

Agency Information Collection Activities: Customs Regulations Pertaining to Customhouse Brokers

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than November 30, 2020) 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.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/* .

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 85 FR Page 53013) on August 27, 2020, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of this Information Collection

Title: Customs Regulations Pertaining to Customhouse Brokers.

OMB Number: 1651–0034.

Form number: 3124 and 3124E.

Current Actions: CBP proposes to extend the expiration date of this collection of information. There is no change to the burden hours or the information collected.

Type of Review: Extension (without change).

Affected Public: Customhouse Brokers.

Abstract: The information contained in Part 111 of the CBP regulations (19 CFR) governs the licensing and conduct of customs brokers. An individual who wishes to take the broker exam must complete the electronic application CBP Form 3124E, ''Application for Customs Broker License Exam,'' or to apply for a broker license, CBP Form 3124, ''Application for Customs Broker License.'' The procedures to request a local or national broker permit can be found in 19 CFR 111.19, and a triennial report is required under 19 CFR 111.30. This information collected from customs brokers is provided for by 19 U.S.C. 1641. CBP Forms 3124 and 3124E may be found at *http://www.cbp.gov/xp/cgov/toolbox/forms/.* Further information about the customs broker exam and how to apply for it may be found at *https://www.cbp.gov/trade/programs-administration/customs-brokers.*

Application for Broker License (Form 3124)

Estimated Number of Respondents: 750.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 750.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 750.

Application for Broker License Exam (Form 3124E)

Estimated Number of Respondents: 2,300.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 2,300.

Estimated Time per Response: 1 hour.
Estimated Total Annual Burden Hours: 2,300.

Trienniel Report

Estimated Number of Respondents: 4,550.
Estimated Number of Annual Responses per Respondent: 1.
Estimated Number of Total Annual Responses: 4,550.
Estimated Time per Response: 0.5 hours.
Estimated Total Annual Burden Hours: 2,275.

National Broker's Permit Application

Estimated Number of Respondents: 200.
Estimated Number of Annual Responses per Respondent: 1.
Estimated Number of Total Annual Responses: 200.
Estimated Time per Response: 1 hour.
Estimated Total Annual Burden Hours: 200.

Dated: October 27, 2020.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2020–24073 Filed 10–29–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0001]

Agency Information Collection Activities: Cargo Manifest/Declaration, Stow Plan, Container Status Messages and Importer Security Filing

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than December 29, 2020) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0001 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Cargo Manifest/Declaration, Stow Plan, Container Status Messages and Importer Security Filing.
OMB Number: 1651–0001.
Form Number: CBP FORM 1302, CBP FORM 1302A, CBP FORM 7509, CBP FORM 7533.
Current Actions: This submission is being made to extend the expiration date with a change to the burden hours.
Type of Review: Extension (with change).
Affected Public: Businesses.
Abstract: CBP Form 1302: The master or commander of a vessel arriving in the United States from abroad with cargo on board must file CBP Form 1302, *Inward Cargo Declaration,* or submit the information on this form using a CBP-approved electronic equivalent. CBP Form 1302 is part of the manifest requirements for vessels entering the United States and was agreed upon by treaty at the United Nations Inter-government Maritime Consultative Organization (IMCO). This form and/or electronic equivalent, is provided for by 19 CFR 4.5, 4.7, 4.7a, 4.8, 4.33, 4.34, 4.38. 4.84, 4.85, 4.86, 4.91, 4.93 and 4.99 and is accessible at: *https://www.cbp.gov/sites/default/files/assets/documents/2020-Apr/CBP%20Form%201302_0.pdf.* Although the form has been mostly automated through the Automated Commercial Environment (ACE), there are still circumstances where a paper CBP Form 1302 is required due to not being captured in ACE. CBP is working to automate the remaining use cases of the CBP for the CBP Form 1302 through the Vessel Entrance and Clearance System (VECS).

CBP Form 1302A: The master or commander of a vessel departing from the United States must file CBP Form 1302A, *Cargo Declaration Outward With Commercial Forms,* or CBP-approved electronic equivalent, with copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest. This form and/or electronic equivalent, is provided for by 19 CFR 4.62, 4.63, 4.75, 4.82, and 4.87–4.89, and is accessible at: *https://www.cbp.gov/sites/default/files/assets/documents/2018-Feb/CBP%20Form%201302A_0.pdf.* Certain functions of the paper CBP Form 1302A that are not part of the automated export manifest process will also be automated through VECS.

Electronic Ocean Export Manifest: CBP began a pilot in 2015 to

electronically collect the ocean export manifest information. This information is transmitted to CBP in advance via the Export Information System within the Automated Commercial Environment (ACE).

CBP Form 7509: The aircraft commander or agent must file Form 7509, *Air Cargo Manifest,* with CBP at the departure airport, or respondents may submit the information on this form using a CBP-approved electronic equivalent. CBP Form 7509 contains information about the cargo onboard the aircraft. This form, and/or electronic equivalent, is provided for by 19 CFR 122.35, 122.48, 122.48a, 122.52, 122.54, 122.73, 122.113, and 122.118 and is accessible at: *http://www.cbp.gov/sites/default/files/documents/CBP%20Form%207509_0.pdf.*

Air Cargo Advance Screening (ACAS): As provided by 19 CFR 122.48b, for any inbound aircraft required to make entry that will have commercial cargo aboard, the inbound air carrier or other eligible party must transmit, via a CBP-approved electronic interchange system, specified advance data concerning the inbound cargo to CBP as early as practicable, but no later than prior to loading of the cargo onto the aircraft.

Electronic Air Export Manifest: CBP began a pilot in 2015 to electronically collect the air export manifest information. This information is transmitted to CBP in advance via the ACE's Export Information System.

CBP Form 7533: The master or person in charge of a conveyance files CBP Form 7533, *INWARD CARGO MANIFEST FOR VESSEL UNDER FIVE TONS, FERRY, TRAIN, CAR, VEHICLE, ETC,* which is required for a vehicle or a vessel of less than 5 net tons arriving in the United States from Canada or Mexico, otherwise than by sea, with baggage or merchandise. Respondents may also submit the information on this form using a CBP-approved electronic equivalent. CBP Form 7533, and/or electronic equivalent, is provided for by 19 CFR 123.4, 123.7, 123.61, 123.91, and 123.92, and is accessible at: *http://www.cbp.gov/sites/default/files/documents/CBP%20Form%207533_0.pdf.*

Electronic Rail Export Manifest: CBP began a pilot in 2015 to electronically collect the rail export manifest information. This information is transmitted to CBP in advance via the ACE's Export Information System.

Manifest Confidentiality: An importer or consignee (inward) or a shipper (outward) may request confidential treatment of its name and address contained in manifests by following the procedure set forth in 19 CFR 103.31.

Vessel Stow Plan: For all vessels transporting goods to the US, except for any vessel exclusively carrying bulk cargo, the incoming carrier is required to electronically submit a vessel stow plan no later than 48 hours after the vessel departs from the last foreign port that includes information about the vessel and cargo. For voyages less than 48 hours in duration, CBP must receive the vessel stow plan prior to arrival at the first port in the United States. The vessel stow plan is provided for by 19 CFR 4.7c.

Container Status Messages (CSMs): For all containers destined to arrive within the limits of a U.S. port from a foreign port by vessel, the incoming carrier must submit messages regarding the status of events if the carrier creates or collects a container status message (CSM) in its equipment tracking system reporting that event. CSMs must be transmitted to CBP via a CBP-approved electronic data interchange system. These messages transmit information regarding events such as the status of a container (full or empty); booking a container destined to arrive in the United States; loading or unloading a container from a vessel; and a container arriving or departing the United States. CSMs are provided for by 19 CFR 4.7d.

Importer Security Filing (ISF): For most cargo arriving in the United States by vessel, the importer, or its authorized agent, must submit the data elements listed in 19 CFR 149.3 via a CBP-approved electronic interchange system within prescribed time frames outlined in 19 CFR 149.2. Transmission of these data elements provide CBP with advance information about the shipment.

Type of Collection: Air Cargo Manifest (CBP Form 7509) Air Cargo Advanced Screening (ACAS).

Estimated Number of Respondents: 215.

Estimated Number of Annual Responses per Respondent: 6820.4651.

Estimated Number of Total Annual Responses: 1,466,400.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 366,600.

Type of Collection: Inward Cargo Manifest for Truck, Rail, Vehicles, Vessels, etc. (CBP Form 7533).

Estimated Number of Respondents: 33,000.

Estimated Numbers of Annual Responses per Respondent: 291.8.

Estimated Number of Total Annual Responses: 9,629,400.

Estimated Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 962,940.

Type of Collection: Cargo Declaration (CBP Form 1302).

Estimated Number of Respondents: 10,000.

Estimated Number of Annual Responses per Respondent: 300.

Estimated Number of Total Annual Responses: 3,000,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 1,500,000.

Type of Collection: Export Cargo Declaration (CBP Form 1302A).

Estimated Number of Respondents: 500.

Estimated Number of Annual Responses per Respondent: 400.

Estimated Number of Total Annual Responses: 200,000.

Estimated Time per Response: 3 minutes.

Estimated Total Annual Burden Hours: 10,000.

Type of Collection: Importer Security Filing.

Estimated Number of Respondents: 240,000.

Estimated Number of Annual Responses per Respondent: 33.75.

Estimated Number of Total Annual Responses: 8,100,000.

Estimated Time per Response: 2.19 hours.

Estimated Total Annual Burden Hours: 17,739,000.

Type of Collection: Vessel Stow Plan.

Estimated Number of Respondents: 163.

Estimated Number of Annual Responses per Respondent: 109.

Estimated Number of Total Annual Responses: 17,767.

Estimated Time per Response: 1.79 hours.

Estimated Total Annual Burden Hours: 31,803.

Type of Collection: Container Status Messages.

Estimated Number of Respondents: 60.

Estimated Number of Annual Responses per Respondent: 4,285,000.

Estimated Number of Total Annual Responses: 257,100,000.

Estimated Time per Response: .0056 minutes.

Estimated Total Annual Burden Hours: 23,996.

Type of Collection: Request for Manifest Confidentiality.

Estimated Number of Respondents: 5,040.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 5,040.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 1,260.

Type of Collection: Electronic Air Export Manifest.

Estimated Number of Respondents: 260.

Estimated Number of Annual Responses per Respondent: 5,640.

Estimated Number of Total Annual Responses: 1,466,400.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 121,711.

Type of Collection: Electronic Ocean Export Manifest.

Estimated Number of Respondents: 500.

Estimated Number of Annual Responses per Respondent: 400.

Estimated Number of Total Annual Responses: 200,000.

Estimated Time per Response: 1.5 minutes.

Estimated Total Annual Burden Hours: 5,000.

Type of Collection: Electronic Rail Export Manifest.

Estimated Number of Respondents: 50.

Estimated Number of Annual Responses per Respondent: 300.

Estimated Number of Total Annual Responses: 15,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 2,490.

Dated: October 27, 2020.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2020–24111 Filed 10–29–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0075]

Agency Information Collection Activities: Drawback Process Regulations

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; Extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted no later than December 29, 2020 to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0075 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Drawback Process Regulations.

OMB Number: 1651–0075.

Form number: CBP Form 7553.

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours.

Type of Review: Extension (with change).

Affected Public: Businesses.

Abstract: The collections of information related to the drawback process are required as per 19 CFR part 190 (Modernized Drawback), which provides for refunds of duties, taxes, and fees for certain merchandise that is imported into the United States where there is a subsequent related exportation or destruction. All claims for drawback, sometimes referred to as TFTEA-Drawback, must be filed electronically in the Automated Commercial Environment (ACE), in accordance with the Trade Facilitation Trade Enforcement Act of 2015 (TFTEA) (Pub. L. 114–125, 130 Stat. 122), and in compliance with the regulations in part 190, 181 (NAFTA Drawback) and 182 (USMCA Drawback). Specific information on completing a claim is available in the drawback CBP and Trade Automated Interface Requirement (CATAIR) document at: *https://www.cbp.gov/document/guidance/ace-drawback-catair-guidelines.*

CBP Form 7553, Notice of Intent to Export, Destroy or Return Merchandise for Purposes of Drawback (NOI), documents both the exportation and destruction of merchandise eligible for drawback. The NOI is the official notification to CBP that an exportation or destruction will occur for drawback eligible merchandise. The CBP Form 7553 has been updated to comply with TFTEA-Drawback requirements and is accessible at *http://www.cbp.gov/newsroom/publications/forms.*

Relevant Regulations and Statutes

Title 19, part 190—*https://ecfr.io/Title-19/Part-190*

19 U.S.C. 1313—*https://www.govinfo.gov/content/pkg/USCODE-2011-title19/pdf/USCODE-2011-title19-chap4-subtitleII-partI-sec1313.pdf*

19 U.S.C. 1313 authorizes the information collected on the CBP form 7553 as well as in the ACE system for the electronic drawback claim.

The New Data Elements in ACE for Drawback include the following:

1. Substituted Value per Unit
2. Entry Summary Line Item Number
3. Bill of Materials/Formula
4. Certificate of Delivery/Drawback Eligibility Indicator
5. Import Tracing Identification Number (ITIN)
6. Manufacture Tracing Identification Number (MTIN)
7. Certification for Valuation of Destroyed Merchandise
8. Substituted Unused Wine Certification
9. Certification of Eligibility for AP and/or WPN Privilege(s)
10. Identification of Accounting Methodology
11. Indicator for Notice of Intent to Export or Destroy
12. Indicator for Waiver of Drawback Claim Rights

New data elements added to the CBP Form 7553:

1. Continuation sheet (#15–19)
2. Line item number added (#15)
3. Rejected merchandise box added (#20)
4. Instructions were edited to comply with TFTEA-Drawback requirements

This collection of information applies to the individuals and companies in the trade community who are and are not familiar with drawback, importing and exporting procedures, and with the CBP regulations.

Please note that CBP Forms 7551 and 7552 are both abolished. From February 24, 2019, onward, TFTEA-Drawback, as provided for in part 190, is the only legal framework for filing drawback claims. No new drawback claims may be filed under the paper-based processes previously provided for in part 191 (Drawback). Sections 190.51, 190.52, and 190.53 provide the requirements to submit a drawback claim electronically. The provisions of part 190 are similar to the provisions in part 191, except where necessary to outline all the data elements for a complete claim (previously contained in CBP form 7551) and modify those requirements to comply with TFTEA-Drawback. CBP form 7552, Certificates of Delivery and Certificates of Manufacturing & Delivery will no longer be requested or accepted to demonstrate the transfer of merchandise. Sections 190.10 and 190.24 require that any transfers of merchandise must be evidenced by business records, as defined in section 190.2.

Type of Information Collection: CBP Form 7553 Notice of Intent to Export/Destroy Merchandise.

Estimated Number of Respondents: 3,066.

Estimated Number of Annual Responses per Respondent: 20.

Estimated Number of Total Annual Responses: 66,772.

Estimated Time per Response: 33 minutes (.55 hours).

Estimated Total Annual Burden Hours: 38,582.

Dated: October 27, 2020.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2020–24069 Filed 10–29–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0013]

Agency Information Collection Activities: Entry and Manifest of Merchandise Free of Duty, Carrier's Certificate of Release

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than November 30, 2020) 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.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 85 FR Page 50830) on August 18, 2020, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Entry and Manifest of Merchandise Free of Duty, Carrier's Certificate of Release.

OMB Number: 1651–0013.

Form Number: CBP Form 7523.

Current Actions: CBP proposes to extend the expiration date of this information collection. There is no change to the burden hours or the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: CBP Form 7523, *Entry and Manifest of Merchandise Free of Duty, Carrier's Certificate of Release,* is used by carriers and importers as a manifest for the entry of merchandise free of duty under certain conditions, such as when a shipment is valued at $2,500 or less. CBP Form 7523 is also used by carriers to show that articles being imported are to be released to the importer or consignee, and as an inward foreign manifest for vehicles or vessels, weighing less than five tons, arriving from Canada or Mexico, otherwise than by sea, with merchandise conditionally free of duty. CBP uses this form to authorize the entry of such merchandise. CBP Form 7523 is authorized by 19 U.S.C. 1433, 1484 and 1498. It is provided for by 19 CFR 123.4 and 19 CFR 143.23. This form is accessible at *http://www.cbp.gov/newsroom/publications/forms?title=7523&=Apply.*

Estimated Number of Respondents: 4,950.

Estimated Number of Annual Responses per Respondent: 20.

Estimated Number of Total Annual Responses: 99,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 8,250.

Dated: October 26, 2020.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2020–24023 Filed 10–29–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0101]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Verification Request and Verification Request Supplement

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until November 30, 2020.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2008–0008. All submissions received must include the OMB Control Number 1615–0101 in the body of the letter, the agency name and Docket ID USCIS–2008–0008.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, Telephone number (202) 272–8377. (This is not a toll-free number; comments are not accepted via telephone message.) Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on August 18, 2020, at 85 FR 50832, allowing for a 60-day public comment period. USCIS did receive 1 comment in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2008–0008 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Verification Request and Verification Request Supplement.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G–845; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federal Government; State, local or Tribal Government. In the verification process, a participating agency validates an applicant's immigration status by inputting identifying information into the Verification Information System (VIS), which executes immigration status queries against a range of data sources. If VIS returns an immigration status and the benefit-issuing agency does not find a material discrepancy with the response and the documents provided by the applicant, the verification process is complete. Then, the agency may use that immigration status information in determining whether or not to issue the benefit. In some cases, agencies that do not access the automated verification system may query USCIS by filing Form G–845. Although the Form G–845 does not require it, if needed certain agencies may also file the Form G–845 Supplement with the Form G–845, along with copies of immigration documents to receive additional information necessary to make their benefit determinations. These forms were developed to facilitate communication between all benefit-granting agencies and USCIS to ensure that basic information required to assess status verification requests is provided. USCIS is making minor revisions to the Form G–845 and is streamlining the Form G–845 Supplement with additional immigration statuses that are commonly requested by agencies in order to make their benefit determinations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection VIS Query is 19,916,942 and the estimated hour burden per response is 0.083 hour. The estimated total number of respondents for the information collection G–845 is 7 and the estimated hour burden per response is 0.083 hour. The estimated total number of respondents for the information collection G–845 Supplement is 44 and the estimated hour burden per response is 0.083 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,653,110 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $64. The collection of information is primarily electronic in nature, but USCIS anticipates a small number of mailings, and the cost accounts for that postage.

Dated: October 26, 2020.

Samantha L Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2020–24062 Filed 10–29–20; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0079]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application for Replacement/Initial Nonimmigrant Arrival-Departure Document

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until December 29, 2020.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0079 in the body of the letter, the agency name and Docket ID USCIS–2007–0011. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2007–0011. USCIS is limiting communications for this Notice as a result of USCIS' COVID–19 response actions.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2007–0011 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Replacement/Initial Nonimmigrant Arrival-Departure Document.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–102; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Nonimmigrants temporarily residing in the United States can use this form to request a replacement of a lost, stolen, or mutilated arrival-departure record, or to request a new arrival-departure record, if one was not issued when the nonimmigrant was last admitted but is now in need of such a record. U.S. Citizenship and Immigration Services (USCIS) uses the information provided by the requester to verify eligibility, as well as his or her status, process the request, and issue a new or replacement arrival-departure record. If the application is approved, USCIS will issue an Arrival-Departure Record.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–102 is 4,100 and the estimated hour burden per response is .75 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 3,075 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $1,182,440.

Dated: October 26, 2020.

Samantha L Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2020–24060 Filed 10–29–20; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0133]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Request for Reduced Fee

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until December 29, 2020.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0133 in the body of the letter, the agency name and Docket ID USCIS–2018–0002. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2018–0002. USCIS is limiting communications for this Notice as a result of USCIS' COVID–19 response actions.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Background

On November 14, 2019, DHS published the proposed rule, ''U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,'' in the **Federal Register** proposing to adjust certain immigration and naturalization benefit request fees charged by U.S. Citizenship and Immigration Services (USCIS). *See* 84 FR 62280. That rule proposed to eliminate this information collection. On August 3, 2020, DHS published the final rule making the changes effective on October 2, 2020. 85 FR 46788 (Aug. 3, 2020) (final rule). Form I–942 was eliminated in the final rule.

On September 29, 2020, the United States District Court for the Northern District of California granted a motion for a preliminary injunction and a stay of the effective date of the final rule in its entirety. *Immigrant Legal Resource Center* v. *Wolf,* No. 4:20–cv–5883 (N.D. Cal. Sept. 29, 2020). On October 8, 2020, the United States District Court for the District of Columbia also granted a motion for a preliminary injunction of the final rule. *See Northwest Immigrant Rights Project, et al.,* v. *United States Citizenship and Immigration Services, et al.* (No. 19–3283 (RDM) (D.D.C., Oct. 8, 2020). Therefore, DHS is enjoined from implementing or enforcing the final rule in its entirety pending final adjudication of the two cases.

USCIS is publishing this notice in accordance with the Paperwork Reduction Act as required to extend the approval to use Form I–942 while the final rule is enjoined.

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2018–0002 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This information collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Request for Reduced Fee.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–942; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses the data collected on this form to verify that the applicant is eligible for a reduced fee for the immigration benefit being requested.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–942 is 4,491 and the estimated hour burden per response is 0.75 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 3,368 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $19,087.

Dated: October 26, 2020.

Samantha L Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2020–24071 Filed 10–29–20; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0153]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: E-Verify Program

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until November 30, 2020.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2007–0023. All submissions received must include the OMB Control Number 1615–0153 in the body of the letter, the agency name and Docket ID USCIS–2007–0023.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, Telephone number (202) 272–8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on July 20, 2020, at 85 FR 43867, allowing for a 60-day public comment period. USCIS did receive one comment in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–0023 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this Information Collection:

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* E-Verify Program.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* No Agency Form Number; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary Business or other for-profit.* E-Verify allows employers to electronically confirm the employment eligibility of newly hired employees. USCIS has received, at the direction of the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB), a temporary second OMB Control Number 1615–0153. The original OMB Control Number, 1615–0092, remains valid while OIRA continues to evaluate a separate submission under that Control Number.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

66,330 respondents averaging 2.26 hours per response (enrollment time includes review and signing of the MOU, registration, new user training, and review of the user guides); plus 425,000, the number of already-enrolled respondents receiving training on new features and system updates averaging 1 hour per response; plus 425,000, the number of respondents submitting E-Verify cases averaging .121 hours per case.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 3,403,281 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $1,887,000.

Dated: October 26, 2020.

Samantha L Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2020–24061 Filed 10–29–20; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7025–N–06]

60-Day Notice of Proposed Information Collection: HUD Environmental Review Online System (HEROS); OMB Control No.: (2506–0202)

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* December 29, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Liz Zepeda, Senior Environmental Specialist, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Liz Zepeda at *Elizabeth.G.Zepeda@hud.gov* or telephone 202–402–3988. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: HUD Environmental Review Online System (HEROS).

OMB Approval Number: 2506–0202.

Type of Request: Extension of currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: 24 CFR part 58, ''Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities'' requires units of general local government receiving HUD assistance to maintain a written environmental review record for all projects receiving HUD funding documenting compliance with the National Environmental Policy Act (NEPA), the regulations of the Council on Environmental Quality, related federal environmental laws, executive orders, and authorities, and Part 58 procedure. Various laws that authorize this procedure are listed in 24 CFR 58.1(b). 24 CFR part 50, ''Protection and Enhancement of Environmental Quality,'' implements procedures for HUD to perform environmental reviews for projects where Part 58 is not permitted by law. Under Part 50, HUD staff complete the environmental review records, but they may use any information supplied by an applicant or contractor, provided HUD independently evaluates the information and is responsible for its accuracy and prepares the environmental finding. HEROS allows users to complete, store, and submit their environmental review records and documents online. HEROS is currently optional for Responsible Entity and other non-HUD users, who may continue to use paper-based environmental review formats.

Respondents (*i.e. affected public*): The respondents are state, local, and tribal governments receiving HUD funding who are required to complete environmental reviews.

Estimated Number of Respondents: 500 units of local, state, and tribal government.

Estimated Number of Responses: 12,200.

Frequency of Response: 25 per year per unit of government.

Average Hours per Response: 45 minutes to 4 hours, depending on level of review.

TOTAL ESTIMATED BURDENS

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Exempt/CENST reviews	500	16	7,500	0.75	5,625	$36.50	$205,312.50
Reviews that convert to exempt	500	8	4,000	2	8,000	36.50	292,000.00
CEST/EA reviews	250	2.8	700	4	2,800	36.50	102,200.00
Total	500	25	12,200	varies	16,425	36.50	599,512.50

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: October 21, 2020.

John Gibbs,

Principal Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2020–24057 Filed 10–29–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7025–N–05]

60-Day Notice of Proposed Information Collection: Revision for Housing Opportunities for Persons With AIDS (HOPWA) Program; OMB Control No.: (2506–0133)

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* December 29, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service at (800) 877–8339 (this is a toll-free number).

FOR FURTHER INFORMATION CONTACT: Claire Donze, Management and Program Speciliast, Office of HIV/AIDS Housing, Department of Housing and Urban Development, 451 7th Street, SW Washington, DC 20410; email Claire Donze at *Claire.L.Donze@hud.gov* or telephone 202–402–2365. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service at (800) 877–8339. This is a toll-free number.

Copies of available documents submitted to OMB may be obtained from Claire Donze.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Housing Opportunities for Persons With AIDS (HOPWA): Grant Application Submission, Recordkeeping, and Reporting.

OMB Approval Number: 2506–0133.

Type of Request: Revision of currently approved collection.

Form Number: HUD–40110–B, HUD–40110–C, HUD–40110–D, SF–424, SF–LLL, and HUD–2991.

Description of the need for the information and proposed use:

The current Paperwork Reduction Act approval under OMB Control No. 2506–0133 covers reporting, recording keeping, and application requirements for both the HOPWA formula and competitive grant programs. This revision applies to reporting requirements for all HOPWA grantees.

For annual reporting, HOPWA grantees complete reporting forms by providing information on activities undertaken, number of clients served, funds expended, and accomplishments achieved. This information supports program evaluation and the ability to measure program beneficiary outcomes related to: maintaining housing stability; preventing homelessness; and improving access to care and support. Grantees are required to report on the activities undertaken only, thus there may be components of these reporting requirements that may not be applicable to every grantee.

The data elements in this submission represent the new annual reporting requirements for both HOPWA formula and competitive grantees, and represent a consolidation of the data elements in HUD–40110–C and HUD–40110–D. Compared to the HUD–40110–C and HUD–40110–D, the data elements in this submission represent data additions, deletions, and modifications that further clarify reporting requirements. The addition of new data elements will allow OHH to better respond to data calls from Congress and to make better programmatic decisions based on more relevant grantee annual data.

HUD systematically reviews and conducts data analysis in order to prepare national and individual grantee performance profiles that are not only used to measure program performance against benchmark goals and objectives, but also to communicate the program's achievement and contributions towards

Departmental strategic goals. HUD plans to continue using the data elements in this submission for these purposes.

The currently approved collection also pertains to grant application submission requirements which will be used to rate applications, determine eligibility, and establish grant amounts. HOPWA will continue using application narratives and form HUD–40110–B, HOPWA Competitive Application & Renewal of Permanent Supportive Housing Project Budget Summary, as a component of determining applicant eligibility and establishing grant amounts for competitive grants. HOPWA competitive and renewal application submission also continue to require submission of the following forms currently approved under this collection: SF424 and SF424b assurances; SFLLL; and HUD–2991. Form HUD–2991 is currently covered under OMB approval number 2506–0112.

Respondents (i.e. affected public): All HOPWA formula, competitive, and renewal grantees.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HOPWA Renewal Application (including HUD–40110–B, narratives, and other requirements listed in the renewal notice)	28.00	1.00	28.00	15.00	420.00	$25.35	$10,647.00
HOPWA Competitive Application (including HUD–40110–B, narratives, and other requirements listed in the NOFA)	40.00	1.00	40.00	45.00	1,800.00	25.35	45,630.00
Consolidated HUD–40110–C (APR) and HUD–40110–D (CAPER) Data Elements	244.00	1.00	224.00	40.0	8,960.00	25.35	227,136.00
HIV Housing Care Continuum Model Report (new competitive SPNS grant only)	26.00	1.00	26.00	20.00	520.00	25.35	13,182.00
Housing as an Intervention to Fight AIDS (HIFA) Model Report (new competitive SPNS grant only)	26.00	1.00	26.00	40.00	1,040.00	25.35	26,364.00
Recordkeeping for Competitive, Renewal, and Formula Grantees	244.00	1.00	244.00	60.00	14,640.00	25.35	371,124.00
Grant Amendments (budget change, extension, or early termination)	30.00	1.00	30.00	6.00	180.00	25.35	4,563.00
Total	638.00		638.00		27,560.00		698,646.00

This chart reflects the public burden for OMB approval 2506–0133 adjusted to remove current forms HUD–40110–C and HUD–40110–D and replace with the new consolidated APR/CAPER data elements represented in this submission (see ''Consolidated HUD–40110–C (APR) and HUD–40110–D (CAPER) Data Elements'' line above). The new consolidated APR/CAPER represented in this submission will be submitted annually by all 128 formula grantees, 82 competitive renewal grantees, eight (8) current HOPWA competitive grantees, and 26 potential new competitive SPNS grantees.

HOPWA grantees and applicants may be required to respond to more than one piece of information collection. All annualized costs reflect staff time spent on tasks in the table. The hourly rate of $25.35 is based on a GS–9 for Rest of United States. 8,960 hours * $25.35 = $227,136.00.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Dated: October 21, 2020.

John Gibbs,

Principal Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2020–24054 Filed 10–29–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7024–N–46]

30-Day Notice of Proposed Information Collection: Technical Suitability of Products Program; OMB Control No.: 2502–0313

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the

Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* November 30, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. 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/StartPrintedPage15501PRAMain.* 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: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on April 24, 2020 at 85 FR 23055.

A. Overview of Information Collection

Title of Information Collection: Technical Suitability of Products Program.

OMB Approval Number: 2502–0313.

OMB Expiration Date: 10/31/2020.

Type of Request: Revision of a currently approved collection.

Form Number: HUD–92005, Description of Materials.

Description of the need for the information and proposed use: This information is needed under HUD's Technical Suitability of Products Program, which provides for the acceptance of new materials and products used in buildings financed with HUD-insured mortgages. This includes new single-family homes, multi-family housing and health care type facilities.

Respondents (i.e. affected public): Business or other for-profit.

Estimated Number of Respondents: 41.

Estimated Number of Responses: 41.

Frequency of Response: 1.

Average Hours per Response: 26.

Total Estimated Burden: 1,066.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or the forms of information technology, *e.g.,* permitting electronic submission of responses.

(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.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2020–24052 Filed 10–29–20; 8:45 am]

BILLING CODE 4210–67–P

INTER-AMERICAN FOUNDATION

Sunshine Act Meetings

TIME AND DATE: November 9, 2020 11:30 a.m.–1:30 p.m.

PLACE: Via tele-conference.

STATUS: Meeting of the Board of Directors and Advisory Council, open to the public, portion closed to the public.

MATTERS TO BE CONSIDERED:

- Approval of the Minutes from the May 4, 2020, Meeting of the Board of Directors
- Agenda overview and President's Report
- Management Report
- New Business
- Adjournment

PORTION TO BE CLOSED TO THE PUBLIC:

- Executive session closed to the public as provided for by 22 CFR 1004.4(b) & (f)

FOR DIAL–IN INFORMATION CONTACT: Karen Vargas, Executive Assistant & Board Liaison (202) 524–8869.

CONTACT PERSON FOR MORE INFORMATION: Aswathi Zachariah, General Counsel (202) 683–7118.

Aswathi Zachariah,

General Counsel.

[FR Doc. 2020–24172 Filed 10–28–20; 11:15 am]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLHQ260000 L10600000.PC0000; OMB Control Number 1004–0042]

Agency Information Collection Activities; Protection, Management, and Control of Wild Horses and Burros

AGENCY: Bureau of Land Management, Interior.

ACTION: 60-Day notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act, the Bureau of Land Management (BLM) is proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before December 29, 2020.

ADDRESSES: Send your comments on this information collection request (ICR) by mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 2134LM, Attention: Chandra Little, Washington, DC 20240.

Fax: to Chandra Little at 202–245–0050.

Electronic Mail: cclittle@blm.gov.

Please reference OMB Control Number 1004–0042 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Holle' Waddell by email at *hwaddell@blm.gov,* or by telephone at 405–579–1860.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also

helps the public understand our information collection requirements and provide the requested data in the desired format.

We are 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 BLM; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BLM enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BLM 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. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This notice pertains to the collection of information that enables the BLM to administer its program for wild horses and burros in compliance with the Wild Free-Roaming Horses and Burros Act (16 U.S.C 1331–1340). In addition to seeking renewal of control number 1004–0042, the BLM requests revision of an existing information-collection activity and form and requests the addition of an information-collection form that has been in use without a control number.

OMB has approved form 4710–10 and its information-collection activity previously with the title, ''Application for Adoption of Wild Horse(s) or Burro(s).'' The BLM proposes that the information-collection activity and form be revised to enable both adoptions and purchases of wild horses or burros, as authorized by 43 U.S.C. 1333(d) and (e). The revised form that includes sales is titled, ''Application for Adoption & Sale of Wild Horse(s) and Burro(s)''.

The form that has been in use without a control number is Form 4710–24, ''BLM Facility Requirement Form'' for use by individuals and non-governmental organizations that participate along with the BLM in joint training programs to increase the number of trained animals available for adoption or purchase.

Title of Collection: Protection, Management, and Control of Wild Horses and Burros (43 CFR Part 4700).

OMB Control Number: 1004–0042.

Form Numbers: 4710–10 and 4710–24.

Type of Review: Renewal and revision of a currently approved collection.

Respondents/Affected Public: Those who wish to adopt and obtain title to wild horses and burros.

Total Estimated Number of Annual Respondents: 7,943.

Total Estimated Number of Annual Responses: 7,943.

Estimated Completion Time per Response: Varies from 10 minutes to 30 minutes, depending on activity.

Total Estimated Number of Annual Burden Hours: 3,745.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Non-Hour Burden Cost: $2,400.

An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Chandra Little,

Regulatory Analyst, Bureau of Land Management.

[FR Doc. 2020–24124 Filed 10–29–20; 8:45 am]

BILLING CODE 4310–84–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1205]

Certain Completion Drill Bits and Products Containing the Same; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation in Its Entirety Based on a Settlement Agreement; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined not to review an initial determination (''ID'') (Order No. 18) of the presiding administrative law judge (''ALJ''), terminating this investigation in its entirety based on a settlement agreement. This investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Ronald A. Traud, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3427. 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 this investigation on July 7, 2020, based on a complaint filed by Varel International Industries, LLC of Carrollton, Texas (''Varel''). 85 FR 40686–87 (July 7, 2020). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain completion drill bits and products containing the same by reason of infringement of certain claims of U.S. Patent No. 10,538,970. *Id.* The complaint further alleges that a domestic industry exists. *Id.* The Commission's notice of investigation named a single respondent, Taurex Drill Bits, LLC of Norman, Oklahoma. *Id.* at 40687. The Office of Unfair Import Investigations is not participating in the investigation. *Id.*

On October 13, 2020, the ALJ issued Order No. 18, the subject ID, terminating the investigation in its entirety based on a settlement agreement. The ID found that the motion complies with 19 CFR 210.21(b), that no extraordinary circumstances prevent the termination of the investigation, and that terminating the investigation is not contrary to the public interest. No petitions for review of the subject ID were filed.

The Commission has determined not to review the subject ID.

The investigation is hereby terminated in its entirety.

The Commission vote for this determination took place on October 26, 2020.

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: October 26, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–24029 Filed 10–29–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1210]

Certain Wrapping Material and Methods for Use in Agricultural Applications; Commission Determination Not To Review an Initial Determination Amending the Complaint and Notice of Investigation To Add a Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 8) issued by the presiding administrative law judge (''ALJ'') amending the complaint and notice of investigation to add Zhejiang Yajia Packaging Materials Co., Ltd. as a respondent.

FOR FURTHER INFORMATION CONTACT: Robert Needham, 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: On August 11, 2020, the Commission instituted this investigation based on a complaint filed on behalf of Tama Group of Israel and Tama USA Inc. of Dubuque, Iowa (together, ''Tama''). 85 FR 48561–62 (Aug. 11, 2020). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wrapping material and methods for use in agricultural applications by reason of infringement of one or more of claims 1, 2, 4–16, 18, 28, 32, 33, and 35–45 of U.S. Patent No. 6,787,209. *Id.* The Commission's notice of investigation named as respondents Zhejiang Yajia Cotton Picker Parts Co., Ltd. of Zhuji City, China; Southern Marketing Affiliates, Inc. of Jonesboro, Arkansas; Hai'an Xin Fu Yuan of Agricultural, Science, and Technology Co., Ltd. of Nantong, China; and Gosun Business Development Co. Ltd. of Grande Prairie, Canada. *Id.* at 48561. The Office of Unfair Import Investigations is not participating in this investigation. *Id.*

On September 16, 2020, Tama moved for leave to amend the complaint and notice of investigation to add Zhejiang Yajia Packaging Materials Co., Ltd. (''Yajia Packaging'') as a respondent. Tama stated that good cause exists for the amendments because Tama learned of Yajia Packaging's involvement through discovery. No party opposed the motion.

On October 7, 2020, the ALJ issued the subject ID and granted the motion for leave to amend the complaint and notice of investigation. No party petitioned for review of the subject ID.

The Commission has determined not to review the subject ID. Yajia Packaging is a respondent in this investigation.

The Commission vote for these determinations took place on October 26, 2020.

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: October 27, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–24116 Filed 10–29–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Armaments Consortium

Notice is hereby given that, on October 9, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Armaments Consortium (''NAC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, CEA Technologies, Inc., Hanover, MD; Syntec Technologies, Inc., Rochester, NY; Mobilestack, Inc., Dublin, CA; Technology Advancement Group, Inc., Dulles, VA; Cervello Technologies, LLC, Clearwater, FL; Carahsoft Technology Corporation, Reston, VA; Rajant Corporation, Malvern, PA; Black Fur Industries, LLC, Tucson, AZ; GS Engineering, Inc., Houghton, MI; IEH Corporation, Brooklyn, NY; Decatur Mold Tool & Eng. Co. Inc., North Vernon, IN; Hyperion Technology Group, Inc., Tupelo, MS; SOLUTE, Inc., San Diego, CA; Precision Inc., Minneapolis, MN; Ignite Fueling Innovation, Inc., Huntsville, AL; NanoVox LLC, Beaverton, OR; Programs Management Analytics & Technologies, Inc., San Diego, CA; AM General LLC, Auburn Hills, MI; Chemring Energetic Devices, Downers Grove, IL; Applied Information Sciences, Inc., Reston, VA; G2 Ops, Inc., Virginia Beach, VA; Wilder Systems LLC, Austin, TX; MORSECORP, INC., Cambridge, MA; TeleCommunication Systems, Inc., Annapolis, MD; Vali, Inc., Huntsville, AL; Mandus Group LLC, Rock Island, IL; Munro & Associates, Inc., Auburn Hills, MI; Sigmatech, Inc., Huntsville, AL; Deloitte Consulting LLP, Arlington, VA; Rocal Corp. dba Rebling Plastics, Warrington, PA; Applied Nanotech Inc., Austin, TX; VetAble Technologies LLC, Brandon, FL; KMS Solutions, LLC, Alexandria, VA; HII Technical Solutions Corporation, Virginia Beach, VA; L3Harris Technologies Power Paragon, Inc., Anaheim, CA; and Del Sigma Technologies LLC, Rockford, MI have been added as parties to this venture.

Also, SiliconScapes, LLC, State College, PA; Advance Concepts Engineering, LLC, Howell, NJ; Cyan Systems, Santa Barbara, CA; STG, Inc., Reston, VA; Expal USA, Inc., Marshall, TX; Laser Techniques Company, LLC, Redmond, WA; Protection Engineering Consultants, LLC, San Antonio, TX; Grid Logic, Inc., Lapeer, MI; WINTEC, Incorporated, Navarre, FL; Daniel Defense, Inc., Black Creek, GA; Peregrine Technical Solutions, LLC, Yorktown, VA; Eclipse Energy Systems, Inc., St. Petersburg, FL; Granite State Manufacturing, Manchester, NH; Ten-X Ammunition, Inc., Rancho Cucamonga,

CA; Interlink Electronics, Inc., Westlake Village, CA; Open Chamber Systems, LLC, Enola, PA; Spirit AeroSystems, Inc., Wichita, KS; Systems & Technology Researc, Woburn, MA; University of Massachusetts (Center for UMass-Industry Research on Polymers), Amherst, MA; Tungsten Heavy Powder, Inc., San Diego, CA; System Studies & Simulation, Inc. (S3), Huntsville, AL; TeraSys Technologies LLC, El Dorado Hills, CA; Technology Service Corporation—California, Los Angeles, CA; SCD.USA Infrared, LLC, West Melbourne, FL; SEMATECH, Inc., Albany, NY; The Shepherd Chemical Company, Norwood, OH; Superior Forge and Steel Corporation, Lima, OH; Fischer Custom Communications, Inc., Torrance, CA; DEFENSEWERX, Fort Walton Beach, FL; Volunteer Aerospace LLC, Knoxville, TN; Data Intelligence Technologies, Inc., Washington, DC; Fathom 4, LLC, Charleston, SC; Universal Technology Company, LLC, Dayton, OH; Ideal Innovations, Inc., Arlington, VA; Science and Engineering Services, LLC, Huntsville, AL; and Undersea Solutions Group, Panama City Beach, FL have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NAC intends to file additional written notifications disclosing all changes in membership.

On May 2, 2000, NAC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 30, 2000 (65 FR 40693).

The last notification was filed with the Department on July 14, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 31, 2020 (85 FR 46177).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–24070 Filed 10–29–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International Standards

Notice is hereby given that on September 24, 2020 pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ASTM International (''ASTM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM activities originating between May 19, 2020 and September 22, 2020, designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM filed its original notification pursuant to Section 6(a) of the Act.

The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification with the Department was filed on May 29, 2020. A notice was filed in the **Federal Register** on July 16, 2020 (85 FR 43261).

Suzanne Morris,

Chief, Premerger and Division Statistics Antitrust Division.

[FR Doc. 2020–24066 Filed 10–29–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act Of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on October 6, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Center for Manufacturing Sciences, Inc. (''NCMS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 3D Systems, Inc., Rockhill, SC; Advanced Analyzer Labs, Inc., Ellicott City, MD; America Makes, Blairsville, PA; American Lightweight Materials Mfg. Innovation Institute (LIFT), Detroit, MI; Analatom Inc., Santa Clara, CA; Aptima Inc., Woburn, MA; Applied Materials Inc., Santa Clara, CA; Armatec Survivability Corp., London, Ontario, Canada; ASM International, Novelty, OH; BEARS LLC, Royal Oak, MI; Cecil College, North East, MD; Curtiss-Wright, Davidson, NC; Deloitte Consulting LLP, Vienna, VA; DeLUX Engineering LLC, Newark, DE; Desktop Metals, Inc., Burlington, MA; Elbit Systems of America LLC, Merrimack, NH; Edison Welding Institute, Columbus, OH; ExOne, Irwin, PA; GasTOPS Inc., Huntsville, AL; General Motors LLC, Warren, MI; Guidehouse LLP, McLean, VA; Harford Community College, BelAir, MD; Hexagon Manufacturing Intelligence, North Kingstown, RI; Identify3D, San Francisco, CA; IR Technologies, Bethesda, MD; J&J Machining LLC, Anaheim, CA; John Hopkins University, Baltimore, MD; Kraetonics LLC, Pensacola, FL; Maglogix, LLC, Denver, CO; MELD Manufacturing Corporation, Christiansburg, VA; Merit Network, Inc., Ann Arbor, MI; Metalbuilt LLC, New Baltimore, MI; Microsoft Corporation, Redmond, WA; Mide Technology Corporation, Medford, MA; Naval Systems Inc., Ironsides, MD; Navitas, Woodridge, IL; Northrop Grumman Corporation, Falls Church, VA; North Dakota State University, Fargo, ND; Open Additive LLC, Beavercreek, OH; Optomec Inc., Albuquerque, NM; Ormond LLC, Auburn, WA; Perisense, Ann Arbor, MI; Phillips Corporation, Hanover, MD; Plassein Technologies Ltd., Las Vegas, NV; PTC, Needham Heights, MA; Robotic Research LLC, Gaithersburg, MD; Sagaris Group Inc., Sterling Heights, MI; Sciperio, Inc., Orlando, FL; Senvol, New York, NY; SHERPA Inc., Punta Gorda, FL; Siemens Government Technologies, Plano, TX; Strategic Resilience Group, LLC, Dumfries, VA; SurClean, Inc., Wixom, MI; Systecon North America, Washington, DC; T.E.A.M., Woonsocket, RI; Thermal Wave Imaging, Inc., Ferndale, MI; Toyon Research Corporation, Goleta, CA; University of Arizona, Tucson, AZ; University of Maryland, College Park—A. James Clark School of Engineering, College Park, MD; University of Northern Iowa Metal Casting Center, Dysart, IA; Vibrant Corporation, Albuquerque, NM; Wet Technologies Inc., Holbrook NY; Wichitech Industries, Inc., Randallstown, MD; and Zoller Inc., Ann Arbor, MI have been added as a party to this venture.

Also, Accio Energy, Inc., Ann Arbor, MI; ACE Clearwater Enterprises, Torrance, CA; Adapx, Inc., Seattle, WA; Advanced Tooling Corporation, Scottsville, VA; Altair Engineering, Inc., Troy, MI; American Foundry Society, Inc., Schaumburg, IL; ANSYS, Inc., Canonsburg, PA; Applied Technology Integration (ATI), Maumee, OH; Aspire Solutions, Inc., Eau Claire, WI; Barfield, Inc., Miami, FL; Baxter Healthcare Corporation, Deerfield, IL; BDM Associates, Norcross, GA; Black & Rossi, LLC, The Woodlands, TX; Caelynx, Inc., Ann Arbor, MI; CIARA Technologies, Montreal, QC, Canada; Claxton Logistics, Stafford, VA; Clemson University, Clemson, SC; The Columbia Group Inc., Alexandria, VA; Consumers Energy Company, Jackson, MI; Dassault Systemes, Dearborn, MI; Decision Incite Inc., Great Falls, VA; Deformation Control Technology, Inc., Cleveland, OH; EADS North America Test and Services, Irvine, CA; Eagle Systems, Inc., Waco, TX; Equipois, LLC, Manchester, NH; Faraday Technology, Inc., Sunnyvale, CA; FIATECH, New York, NY; FIVES Machining Systems Inc., Hebron, KY; Flight Support, Inc., North Haven, CA; Focus:HOPE, Detroit, MI; Ford Motor Company, Dearborn, MI; General Dynamics—OTS, Troy, MI; General Lasertronics Corporation, San Jose, CA; General Pattern Co. Inc., Blaine, MN; Great Lakes Composites Consortium, Inc., Dafter, MI; I.D. Systems, Inc., Woodcliffe Lake, NJ; Intel Corporation, Santa Clara, CA; Kitsap Economic Development Alliance, Silverdale, WA; L&L Products, Inc., Bruce Township, MI; Macro USA Corporation, New York, NY; MagneGas Corporation, Clearwater, FL; Messier-Dowty, Inc., Everett, WA; MET–L–FLO, Inc., Sugar Grove, IL; MichBio, Ann Arbor, MI; Michigan Manufacturing Technology Institute (MMTC), Troy, MI; Michigan Technological University, Houghton, MI; National Center for Defense Manufacturing and Machining (NCDMM), Blairsville, PA; Nimbis Services, Inc., Oro Valley, AZ; Northern Illinois University, DeKalb, IL; The Ohio State University, Columbus, OH; OMAX Corporation, Kent, WA; Original Equipment Suppliers Association (OESA), Southfield, MI; Perficient, Inc., Livonia, MI; Pratt & Whitney, East Hartford, CT; The Procter & Gamble Company, Cincinnati, OH; Profile Composites Inc., Sidney, BC, Canada; PYA Analytics, Knoxville, TN; R Systems NA, Inc., Champaign, IL; RGS Associates, Inc., Lancaster, MI; Rockwell Automation, Inc., Troy, MI; Russells Technical Products, Holland, MI; Saratoga Data Systems, Saratoga Springs, NY; Services and Solutions Group, LLC, Falls Church, VA; Sikorsky Aircraft, Stratford, CT; SimaFore, Inc., Ann Arbor, MI; StandardAero Redesign Services, Inc., Scottsdale, AZ; Stratasys Inc., Farmington Hills, MI; Survivability Solutions LLC, Lacey WA; Sustainable Water Works, Detroit, MI; Tactical Edge, LLC, Clarksville, TN; Tata Technologies, Novi, MI; TechSolve, Inc., Cincinnati, OH; Topline Technology Solutions, LLC, Bedford, IN; Tracen Technologies, Inc., Manassas, VA; Troika Solutions, LLC, Reston, VA; United Global Group, Fredericksburg, VA; University of Alabama, Tuscaloosa, AL; University of Dayton Research Institute (UDRI), Dayton, OH; University of Michigan, Ann Arbor, MI; Vectron International, Hudson, NH; Whitney, Bradley & Brown, Inc., Dumfries, VA; WinTec Arrowmaker, Fort Washington, MD; and Ziota Technology, Inc., Saint-Hubert, QC, Canada have withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notifications disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on June 02, 2016. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 6, 2016 (81 FR 44047).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–24072 Filed 10–29–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant To The National Cooperative Research And Production Act Of 1993—Integrated Photonics Institute For Manufacturing Innovation Operating Under The Name Of The American Institute For Manufacturing Integrated Photonics

Notice is hereby given that, on October 2, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Integrated Photonics Institute for Manufacturing Innovation operating under the name of the American Institute for Manufacturing Integrated Photonics (''AIM Photonics'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, The Pennsylvania State University, State College, PA; Bridgewater State University, Bridgewater, MA; Presco Engineering, Inc., Woodbridge, CT; and HD MicroSystems, LLC, Parlin, NJ have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AIM Photonics intends to file additional written notifications disclosing all changes in membership.

On June 16, 2016, AIM Photonics filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 25, 2016 (81 FR 48450).

The last notification was filed with the Department on May 1, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 19, 2020 (85 FR 29977).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–24068 Filed 10–29–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Anheuser-Busch InBev SA/NV, et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Eastern District of Missouri, in *United States* v. *Anheuser-Busch InBev SA/NV, et al.,* Civil Action No. 4:20–cv–01282–SRC. On September 18, 2020, the United States filed a Complaint alleging that the proposed acquisition by Anheuser-Busch Companies, LLC (''AB Companies''), a

minority shareholder in Craft Brew Alliance, Inc. (''CBA''), of the remaining shares of CBA would violate Section 7 of the Clayton Act, 15 U.S.C. 18. AB Companies is a wholly-owned subsidiary of Anheuser-Busch InBev SA/NV (''ABI''). The proposed Final Judgment, filed at the same time as the Complaint, requires ABI, AB Companies, and CBA to divest Kona Brewery, LLC, which houses CBA's entire Kona brand business in the State of Hawaii, among other related tangible and intangible assets, and to license to the acquirer the Kona brand in Hawaii. The United States has approved PV Brewing Partners, LLC, as the acquirer.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the Eastern District of Missouri. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Robert A. Lepore, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, Department of Justice, 450 5th Street NW, Suite 8000, Washington, DC 20530 (telephone: 202–307–6349).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

United States of America, Plaintiff, v. *Anheuser-Busch INBEV SA/NV, Anheuser-Busch Companies, LLC,* and *Craft Brew Alliance, Inc.,* Defendants.

Civil Action No.: 4:20-cv-01282-SRC
Judge Stephen R. Clark

COMPLAINT

1. The United States of America brings this civil antitrust action to enjoin Anheuser-Busch InBev SA/NV (''ABI'') and Anheuser-Busch Companies, LLC (''AB Companies''), from acquiring Craft Brew Alliance, Inc. (''CBA''). The United States alleges as follows:

I. NATURE OF THE ACTION

2. On November 11, 2019, ABI, which has been a minority shareholder in CBA, agreed to acquire all of CBA's remaining shares in a transaction valued at approximately $220 million.

3. ABI is a global brewing company with the largest beer sales worldwide and in the United States, including in the state of Hawaii. CBA is a national brewing company with the fifth-largest beer sales in Hawaii. As measured by 2019 revenue, ABI accounts for approximately 28% of all beer sales in Hawaii, and CBA accounts for approximately 13% of all beer sales in Hawaii.[1]

4. ABI proposes to acquire CBA through ABI's wholly-owned subsidiary AB Companies, a Delaware limited liability company. ABI is already a minority shareholder in CBA, owning approximately 31% of CBA's shares. ABI's proposed acquisition of CBA would give ABI 100% ownership of CBA, resulting in ABI's total control over all aspects of CBA's competitive decision-making, including pricing, marketing, and promotions.

5. As a result, the transaction would eliminate important head-to-head competition between ABI and CBA in Hawaii, and would facilitate price coordination following the transaction. This reduction in competition would likely result in increased prices and reduced innovation for beer consumers in Hawaii.

6. For these reasons, ABI's proposed acquisition of CBA violates Section 7 of the Clayton Act, 15 U.S.C. § 18, and should be permanently enjoined.

II. JURISDICTION, VENUE, AND INTERSTATE COMMERCE

7. The United States brings this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain Defendants ABI, AB Companies, and CBA from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

8. Venue is proper for ABI, a Belgian corporation, under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1391(b) and (c). Venue is proper for AB Companies, a Delaware limited liability company headquartered in St. Louis, Missouri, in this judicial district under 28 U.S.C. §§ 1391(b) and (c). Venue is proper for CBA, a Washington corporation, in this judicial district under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1391(b) and (c).

9. ABI, AB Companies, and CBA produce and sell beer in the flow of interstate commerce and their production and sale of beer substantially affect interstate commerce. ABI, AB Companies, and CBA have each consented to personal jurisdiction and venue in this judicial district for purposes of this action.

III. THE DEFENDANTS AND THE UNITED STATES BEER INDUSTRY

A. The Defendants

10. ABI is a corporation organized and existing under the laws of Belgium, with its headquarters in Leuven, Belgium. ABI owns numerous major beer brands sold in the United States, including in Hawaii. These brands include Bud Light, Budweiser, Busch Light, Natural Light, Michelob Ultra, Stella Artois, and Golden Road.

11. AB Companies is a wholly-owned subsidiary of ABI and a Delaware limited liability company with its headquarters in St. Louis, Missouri. On November 11, 2019, it agreed to acquire all of CBA's outstanding shares in a transaction valued at approximately $220 million.

12. CBA is a corporation organized and existing under the laws of Washington, with its headquarters in Portland, Oregon. CBA owns several beer brands sold in the United States, including Widmer Brothers, Omission, Redhook, and Kona, a brand that originated in Hawaii and is especially popular in that state.

13. ABI currently holds approximately 31% of CBA's outstanding shares, delivers CBA brands of beer to wholesalers throughout the United States, and has a contract with CBA to brew some CBA brands of beer at ABI breweries. ABI also has the right to appoint two of the eight seats on CBA's Board of Directors.

B. Beer Segments and Pricing

14. Beer brands sold in Hawaii, like those sold in the United States in general, are often segmented based on price and quality. ABI groups beer into five segments: value, core, core-plus, premium, and super-premium (listed in order of increasing price and quality).

15. ABI owns beer brands in each beer segment in Hawaii: value (where its brands include Busch Light and Natural Light), core (where its brands include Bud Light and Budweiser), core-plus (where its brands include Michelob Ultra and Bud Light Lime), premium (where its brands include Michelob Ultra Pure Gold), and super-premium (where its brands include Stella Artois and Golden Road).

16. CBA's Kona brand is generally considered a premium beer. Consumers may ''trade up'' or ''trade down'' between segments in response to changes in price. For example, as the prices of core-plus brands approach the prices of premium brands, consumers are increasingly willing to ''trade up'' from core-plus brands to premium brands. Therefore, the competition provided by CBA's Kona in the premium segment serves as an important constraint on the ability of ABI to raise its beer prices not only in the premium segment, but also in core-plus and other beer segments.

IV. THE RELEVANT MARKET

A. Relevant Product Market

17. The relevant product market for analyzing the effects of the proposed acquisition is beer. Beer is usually made from a malted cereal grain, flavored with hops, and brewed via a fermentation process. Beer's taste, alcohol content, image (e.g., marketing and consumer perception), price, and other factors make it substantially different from other alcoholic beverages.

18. Other alcoholic beverages, such as wine and distilled spirits, are not reasonable

[1] Market share calculations are based on distributor sales in Hawaii.

substitutes that would discipline a small but significant and non-transitory increase in the price of beer, and relatively few consumers would substantially reduce their beer purchases or turn to alternatives in the event of such a price increase. Therefore, a hypothetical monopolist producer of beer likely would increase its prices by at least a small but significant and non-transitory amount.

B. Relevant Geographic Market

19. The relevant geographic market for analyzing the effects of the proposed acquisition is no larger than the state of Hawaii. The relevant geographic market is best defined by the locations of the customers who purchase beer, rather than by the locations of breweries that produce beer. Brewers develop pricing and promotional strategies based on an assessment of local demand for their beer, local competitive conditions, and the local strength of different beer brands. Consumers buy beer near their homes and typically do not travel great distances to buy beer even when prices rise. Consumers in Hawaii are particularly unlikely to travel outside the state to buy beer, as they are located approximately 2,000 miles from the mainland United States.

20. For these reasons, a hypothetical monopolist of beer sold in Hawaii likely would increase its prices in that market by at least a small but significant and non-transitory amount. Therefore, Hawaii is a relevant geographic market and ''section of the country'' within the meaning of Section 7 of the Clayton Act.

V. ABI'S ACQUISITION OF CBA IS LIKELY TO RESULT IN ANTICOMPETITIVE EFFECTS

A. The Transaction Would Increase Market Concentration Significantly

21. The proposed acquisition would increase market concentration significantly for beer in Hawaii. ABI and CBA would have a combined share of approximately 41% in the relevant market following the transaction. Market concentration is often one useful indicator of the level of competitive vigor in a market and the likely competitive effects of a merger. The more concentrated a market, and the more a transaction would increase concentration in a market, the more likely it is that the transaction would result in harm to consumers by meaningfully reducing competition.

22. Concentration in relevant markets is typically measured by the Herfindahl-Hirschman Index (or ''HHI,'' defined and explained in Appendix A). Markets in which the HHI is between 1,500 and 2,500 are considered moderately concentrated. Mergers that increase the HHI by more than 100 points and result in a moderately concentrated market potentially raise significant competitive concerns. *See* U.S. Dep't of Justice & Fed. Trade Comm'n, *Horizontal Merger Guidelines* § 5.3 (revised Aug. 19, 2010) (''Merger Guidelines''), https://www.justice.gov/atr/horizontal-merger-guidelines-08192010.

23. The transaction would result in a moderately concentrated market with a post-acquisition HHI of nearly 2,500 points, just below the threshold denoting a highly concentrated market. Moreover, the HHI would increase as a result of the transaction by more than 700 points. Therefore, ABI's proposed acquisition of CBA potentially raises significant competitive concerns. *See* Merger Guidelines § 5.3.

24. These concentration measures likely understate the extent to which the transaction would result in anticompetitive effects such as higher prices and less innovation in the relevant market. As explained in Section V.C., the market for beer in Hawaii shows signs of vulnerability to coordinated conduct, and the transaction is likely to enhance that vulnerability. Those conditions make the transaction more likely to raise significant competitive concerns than the measures of concentration alone would indicate. *See* Merger Guidelines § 7.1.

B. ABI's Acquisition of CBA Would Eliminate Head-to-Head Competition Between ABI and CBA

25. Today, ABI and CBA compete directly against each other in Hawaii. In that state, CBA's Kona brand competes closely with ABI's Stella Artois and Michelob Ultra brands, and also competes with ABI's Bud Light and Budweiser brands. Recent developments and product innovations have further enhanced the degree of competition between ABI and CBA. For example, CBA recently introduced Kona Light, a lower calorie brand similar to ABI's low-calorie offerings like ABI's Michelob Ultra and Bud Light. CBA's share of the beer market in Hawaii has been among the fastest growing in the state over the past seven years. ABI's proposed acquisition of CBA likely would substantially lessen this current head-to-head competition between ABI and CBA in Hawaii, in violation of Section 7 of the Clayton Act.

26. Moreover, competition between ABI and CBA in Hawaii is poised to increase in the future. CBA is investing in its business in Hawaii, and it has plans to grow its share of beer volume sold in Hawaii by about 25% by 2021. CBA is also constructing a new brewery in Hawaii that is scheduled to become operational in the next few months.

27. ABI has plans to grow its share of beer in the premium segment. In recent years, consumer preferences have shifted toward the premium and super-premium segments. Because ABI's positions in the value, core, and core-plus segments are stronger than its positions in the premium and super-premium segments, this trend toward the premium and super-premium segments has threatened ABI's overall market share of beer and made ABI's plans to expand its share of beer in the premium segment more urgent. These plans include the introduction of new premium brands and other brand innovations. CBA's Kona is positioned as a premium beer in Hawaii. Therefore, ABI's increased focus on the premium segment would increase competition with CBA's Kona.

28. For these reasons, competition between ABI and CBA in Hawaii likely would grow significantly in the absence of the proposed acquisition. ABI's acquisition of CBA, therefore, is likely to substantially lessen this future potential competition between ABI and CBA, also in violation of Section 7 of the Clayton Act.

C. ABI's Acquisition of CBA Would Facilitate Price Coordination

29. Historically, ABI has employed a ''price leadership'' strategy throughout the United States, including in Hawaii. According to this strategy, ABI, with the largest beer sales in the United States and Hawaii, seeks to generate industry-wide price increases by pre-announcing its own price increases and purposefully making those price increases transparent to the market so its primary competitors will follow its lead. These announced price increases, which can vary by geography because of different competitive conditions, typically cover a broad range of beer brands and packages (e.g., container and size). After announcing price increases, ABI tracks the degree to which its primary competitors match its price increases. Depending on the competitive response, ABI will either maintain, adjust, or rescind an announced price increase.

30. For many years, Molson Coors Beverage Company (''Molson Coors''), the brewer with the second-largest beer sales in the United States and owner of many brands sold in Hawaii such as Miller Lite, Coors Light, and Blue Moon, has followed ABI's announced price increases in Hawaii to a significant degree. Molson Coors's willingness to follow ABI's announced price increases is constrained, however, by the diversion of sales to other competitors who are seeking to gain share, including CBA and its Kona brand.

31. By acquiring CBA, ABI would gain control over Kona's pricing and would likely increase Kona's price, thereby eliminating a significant constraint on Molson Coors's willingness to follow ABI's announced price increases in Hawaii. By reducing Kona's constraint on Molson Coors's willingness to increase prices, the acquisition likely increases the ability of ABI to facilitate price coordination, thereby resulting in higher prices for beer sold in Hawaii. For this reason, ABI's acquisition of CBA likely would substantially lessen competition in Hawaii in violation of Section 7 of the Clayton Act.

VI. ABSENCE OF COUNTERVAILING FACTORS

32. New entry and expansion by competitors likely will not be timely and sufficient in scope to prevent the acquisition's likely anticompetitive effects. Barriers to entry and expansion within Hawaii include: (i) the substantial time and expense required to build a brand's reputation; (ii) the substantial sunk costs for promotional and advertising activity needed to secure the distribution and placement of a new entrant's beer in retail outlets; (iii) the time and cost of building new breweries and other facilities; and (iv) the difficulty of developing an effective network of beer distributors with incentives to promote and expand a new entrant's sales.

33. The anticompetitive effects of the proposed acquisition are not likely to be eliminated or mitigated by any efficiencies the proposed acquisition may achieve.

VII. VIOLATION ALLEGED

34. The United States hereby incorporates the allegations of paragraphs 1 through 33 above as if set forth fully herein.

35. The proposed transaction likely would substantially lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and likely would have the following anticompetitive effects, among others:

(a) head-to-head competition between ABI and CBA for beer in Hawaii would be substantially lessened;
(b) the ability and incentive of ABI to coordinate higher prices for beer in Hawaii would be substantially increased; and
(c) competition generally in the market for beer in Hawaii would be substantially lessened.

REQUESTED RELIEF

The United States requests:

1. That the proposed acquisition be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;
2. That Defendants be permanently enjoined and restrained from carrying out the proposed transaction or from entering into or carrying out any other agreement, understanding, or plan by which ABI would acquire CBA, be acquired by, or merge with CBA;
3. That the United States be awarded its costs for this action; and
4. That the United States be awarded such other relief as the Court may deem just and proper.

Dated: September 18, 2020

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

MAKAN DELRAHIM
Assistant Attorney General for Antitrust

BERNARD A. NIGRO, JR.
Principal Deputy Assistant Attorney General

MICHAEL F. MURRAY
Deputy Assistant Attorney General

KATHLEEN S. O'NEILL
Senior Director of Investigations & Litigation

ROBERT A. LEPORE
Chief, Transportation, Energy & Agriculture Section

PATRICIA C. CORCORAN
Assistant Chief, Transportation, Energy & Agriculture Section

Jeffrey B. Jensen
United States Attorney, Eastern District of Missouri

NICHOLAS P. LLEWELLYN (MO#43839)
Assistant United States Attorney, Chief, Civil Division

Thomas F. Eagleton U.S. Courthouse, 111 S. 10th Street, 20th Floor, St. Louis, MO 63102, Tel: (314) 539–7637, Fax: (314) 539–2287, Email: *Nicholas.Llewellyn@usdoj.gov*

JILL C. MAGUIRE* (DC#979595)
Assistant Chief, Healthcare & Consumer Products Section

DON P. AMLIN
GRANT A. BERMANN
DAVID C. KELLY
WILLIAM M. MARTIN
MICHAEL T. NASH

U.S. Department of Justice, Antitrust Division, 450 Fifth Street NW, Suite 4100, Washington, DC 20530, Tel: (202) 598–8805, Fax: (202) 307–5802, Email: *jill.maguire@usdoj.gov*

Attorneys for the United States
*Attorney of Record

APPENDIX A

DEFINITION OF THE HERFINDAHL-HIRSCHMAN INDEX

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30 percent, 30 percent, 20 percent, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size distribution of the firms in a market and approaches zero when a market consists of a large number of small firms. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases. Markets in which the HHI is between 1,500 and 2,500 are considered to be moderately concentrated. *See* U.S. Dep't of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines § 5.3 (revised Aug. 19, 2010), *https://www.justice.gov/atr/horizontal-merger-guidelines-08192010*. Transactions that increase the HHI by more than 100 points in moderately concentrated markets potentially raise significant competitive concerns under the guidelines issued by the U.S. Department of Justice and Federal Trade Commission. *See id.*

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

United States of America, Plaintiff, v. *Anheuser-Busch Inbev SA/NV, Anheuser-Busch Companies, LLC,* and *Craft Brew Alliance, Inc.*, Defendants.

Civil Action No.: 4:20-cv-01282-SRC
Judge Stephen R. Clark

PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on September 18, 2020;

AND WHEREAS, the United States and Defendants, Anheuser-Busch InBev SA/NV (''ABI''), Anheuser-Busch Companies, LLC (''AB Companies''), and Craft Brew Alliance, Inc. (''CBA''), have consented to entry of this Final Judgment without the taking of testimony, without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to make a divestiture to remedy the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants represent that the divestiture and other relief required by this Final Judgment can and will be made and that Defendants will not later raise a claim of hardship or difficulty as grounds for asking the Court to modify any provision of this Final Judgment;

NOW THEREFORE, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

The Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. DEFINITIONS

As used in this Final Judgment:

A. ''Acquirer'' means PV Brewing or any other entity to which Defendants divest the Divestiture Assets.

B. ''ABI'' means Defendant Anheuser-Busch InBev SA/NV, a Belgian corporation with its headquarters in Leuven, Belgium, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''AB Companies'' means Defendant Anheuser-Busch Companies, LLC, a wholly-owned subsidiary of ABI and a Delaware limited liability company with its headquarters in St. Louis, Missouri, its successors and assigns, and its subsidiaries (including the Hawaii WOD), divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''CBA'' means Defendant Craft Brew Alliance, Inc., a Washington corporation with its headquarters in Portland, Oregon, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. ''Covered Entity'' means any Beer brewer, importer, distributor, or brand owner (other than ABI) that derives more than $3.75 million in annual gross revenue from Beer sold for further resale in the State of Hawaii, or from license fees generated by such Beer sales in the State of Hawaii.

F. ''Covered Interest'' means ownership or control of any Beer brewing assets of, or any Beer brand assets of, or any Beer distribution assets of, or any interest in (including any financial, security, loan, equity, intellectual property, or management interest), a Covered Entity; except that a Covered Interest shall not include (i) a Beer brewery or Beer brand located outside the State of Hawaii that does not generate at least $3.75 million in annual gross revenue from Beer sold for resale in the State of Hawaii; (ii) a license to distribute a non-ABI Beer brand where said distribution license does not generate at least $1 million in annual gross revenue in the State of Hawaii; or (iii) a Beer distributor which does not generate at least $1 million in annual gross revenue in the State of Hawaii.

G. ''PV Brewing'' means PV Brewing Partners, LLC, a Delaware limited liability company with its headquarters in Overland Park, Kansas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

H. ''Kona Hawaii'' means Kona Brewery LLC, a Hawaii limited liability company with its headquarters in Kailua-Kona, Hawaii, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

I. ''Divestiture Assets'' means all of Defendants' rights, titles, and interests in and to all property and assets, tangible and intangible, wherever located, related to or used or held for use in connection with Kona Hawaii, including, but not limited to:

1. the following facilities (the ''Divestiture Facilities''):

a. the restaurant located at 7192 Kalaniana'ole Highway, Honolulu, Hawaii 96825 (''Koko Marina Pub'');

b. the brewery and brewpub located at 74–5612 Pawai Place, Kailua-Kona, Hawaii, 96740 (the ''Kona Pub and Brewery''); and

c. the New Kona Brewery;

2. all rights of the Acquirer under the Kona IP License;

3. all tangible personal property, including, but not limited to, machinery and manufacturing equipment, tooling and fixed assets, vehicles, inventory, merchandise, office equipment and furniture, materials, computer hardware and supplies;

4. all contracts, contractual rights, and customer relationships; and all other agreements, commitments, and understandings, including, but not limited to, teaming arrangements, leases, certifications, and supply agreements;

5. all licenses, permits, certifications, approvals, consents, registrations, waivers, and authorizations issued or granted by any governmental organization, and all pending applications or renewals;

6. all records and data, including (a) customer lists, accounts, sales, and credit records, (b) production, repair, maintenance, and performance records, (c) manuals and technical information CBA provides to its own employees, customers, suppliers, agents, or licensees, (d) records and research data concerning historic and current research and development activities, including, but not limited, to designs of experiments and the results of successful and unsuccessful designs and experiments, and (e) drawings, blueprints, and designs;

7. all intellectual property owned, licensed, or sublicensed, either as licensor or licensee, including (a) patents, patent applications, and inventions and discoveries that may be patentable, (b) registered and unregistered copyrights and copyright applications, and (c) registered and unregistered trademarks, trade dress, service marks, service names, trade names, and trademark applications; and

8. all other intangible property, including (a) commercial names and d/b/a names, (b) technical information, (c) computer software and related documentation, know-how, trade secrets, design protocols, specifications for materials, specifications for parts, specifications for devices, safety procedures (e.g., for the handling of materials and substances), quality assurance and control procedures, (d) design tools and simulation capabilities, and (e) rights in internet web sites and internet domain names.

Provided, however, that the assets specified in Paragraphs II.I.1.-8., do not include (a) ownership of the Kona IP; (b) intellectual property associated with the sale of Kona Products outside the State of Hawaii; (c) Defendants' facilities located outside Hawaii that are used to brew, develop, package, import, distribute, market, promote, or sell Kona Products; or (d) AB Companies' wholly-owned distributor located in the State of Hawaii.

J. ''Beer'' is defined for purposes herein as any fermented beverage, brewed or produced from malt, wholly or in part, or from rice, grain of any kind, bran, glucose, sugar, and molasses when such items are used as a substitute for malt, or from honey, fruit, fruit juice, fruit concentrate, herbs, spices, or other food materials. For the avoidance of doubt, Beer, as defined herein, does not include any distilled alcoholic beverages (as defined as of September 1, 2020 in 27 C.F.R. Section 5.11) or wine (as defined as of September 1, 2020 in 27 C.F.R. 410, except that irrespective of the foregoing definition, hard cider shall be included within the definition of Beer herein).

K. ''Distributor'' means a wholesaler in the State of Hawaii who acts as an intermediary between a brewer or importer of Beer and a retailer of Beer.

L. ''Hawaii WOD'' means Anheuser-Busch Sales of Hawaii, Inc., which is AB Companies' wholly-owned distributor in the State of Hawaii.

M. ''Kona Products'' means (1) all products produced by Defendants using the ''Kona'' brand name at any time after November 11, 2019, and (2) all products produced by Acquirer using the ''Kona'' brand name.

N. ''Kona IP'' means all intellectual property used or held for use in connection with the brewing, developing, packaging, importing, distributing, marketing, promoting, or selling of Kona Products in Hawaii. This includes intellectual property connected to the ''Kona'' brand name (and all associated trademarks, service marks, and services names) used or held for use in connection with the brewing, developing, packaging, importing, distributing, marketing, promoting, or selling of Kona Products in the State of Hawaii.

O. ''Kona IP License'' means an exclusive, irrevocable, fully paid-up, royalty-free, perpetual license to the Kona IP for use in the State of Hawaii.

P. ''New Brewery Completion'' means the achievement by Defendants of an average production capacity of 1,500 barrels of saleable Beer each calendar week for three consecutive calendar weeks at the New Kona Brewery.

Q. ''New Kona Brewery'' means the brewery located at Lot 16 in Kailua-Kona, Hawaii.

R. ''Relevant Personnel'' means all full-time, part-time, or contract employees of Kona Hawaii, wherever located, whose job responsibilities relate in any way to the brewing, developing, packaging, importing, distributing, marketing, promoting, or selling of Kona Products in the State of Hawaii, at any time between November 11, 2019, and the date on which the Divestiture Assets are divested to Acquirer.

S. ''Transaction'' means AB Companies' proposed acquisition of the remaining shares of CBA that AB Companies does not already own.

III. APPLICABILITY

A. This Final Judgment applies to ABI, AB Companies, and CBA, as defined above, and all other persons in active concert or participation with any Defendant who receive actual notice of this Final Judgment.

B. If, prior to complying with Section IV and Section V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of business units that include the Divestiture Assets, Defendants must require any purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from Acquirer.

IV. DIVESTITURE

A. Defendants are ordered and directed, within 10 calendar days after the Court's entry of the Asset Preservation and Hold Separate Stipulation and Order in this matter, to divest the Divestiture Assets in a manner consistent with this Final Judgment to PV Brewing or to another Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed 60 calendar days in total and will notify the Court of any extensions.

B. Defendants are ordered and directed, within 180 calendar days after the Court's entry of the Asset Preservation and Hold Separate Stipulation and Order in this matter, to achieve New Brewery Completion in a manner consistent with this Final Judgment to PV Brewing or to another Acquirer acceptable to the United States, in its sole discretion.

C. Defendants must use their best efforts to divest the Divestiture Assets as expeditiously as possible and may not take any action to impede the permitting, operation, or divestiture of the Divestiture Assets. To incentivize Defendants to achieve New Brewery Completion within 180 calendar days after the Court's entry of the Asset Preservation and Hold Separate Stipulation and Order in this matter, beginning on calendar day 181 Defendants are ordered to pay to the United States $25,000 per day until they achieve New Brewery Completion. If Defendants demonstrate to the United States that unanticipated material difficulties have resulted in unavoidable additional delays to New Brewery Completion, the United States may, in its sole discretion, agree to forgo some or all of the payments.

D. Unless the United States otherwise consents in writing, divestiture pursuant to this Final Judgment must include the entire Divestiture Assets and must be accomplished in such a way as to satisfy the United States,

in its sole discretion, that the Divestiture Assets can and will be used by Acquirer as part of a viable, ongoing business of the brewing, developing, packaging, importing, distributing, marketing, promoting, and selling of Beer in the State of Hawaii, and that the divestiture to Acquirer will remedy the competitive harm alleged in the Complaint.

E. The divestiture must be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) to compete effectively in the brewing, developing, packaging, importing, distributing, marketing, promoting, and selling of Beer in the State of Hawaii.

F. The divestiture must be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between Acquirer and Defendants gives Defendants the ability unreasonably to raise Acquirer's costs, to lower Acquirer's efficiency, or otherwise to interfere in the ability of Acquirer to compete effectively.

G. In the event Defendants are attempting to divest the Divestiture Assets to an Acquirer other than PV Brewing, Defendants promptly must make known, by usual and customary means, the availability of the Divestiture Assets. Defendants must inform any person making an inquiry regarding a possible purchase of the Divestiture Assets that the Divestiture Assets are being divested in accordance with this Final Judgment and must provide that person with a copy of this Final Judgment. Defendants must offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets that are customarily provided in a due-diligence process; *provided, however,* that Defendants need not provide information or documents subject to the attorney-client privilege or work-product doctrine. Defendants must make all information and documents available to the United States at the same time that the information and documents are made available to any other person.

H. Defendants must provide prospective Acquirers with (1) access to make inspections of the Divestiture Assets; (2) access to all environmental, zoning, and other permitting documents and information; and (3) access to all financial, operational, or other documents and information customarily provided as part of a due diligence process. Defendants also must disclose all encumbrances on any part of the Divestiture Assets, including on intangible property.

I. Defendants must cooperate with and assist Acquirer to identify and hire all Relevant Personnel.

1. Within 10 business days following the filing of the Complaint in this matter, Defendants must identify all Relevant Personnel to Acquirer and the United States, including by providing organization charts covering all Relevant Personnel.

2. Within 10 business days following receipt of a request by Acquirer or the United States, Defendants must provide to Acquirer and the United States the following additional information related to Relevant Personnel: name; job title; current salary and benefits including most recent bonus paid, aggregate annual compensation, current target or guaranteed bonus, if any, and any other payments due to or promises made to the employee; descriptions of reporting relationships, past experience, responsibilities, and training and educational histories; lists of all certifications; and all job performance evaluations. If Defendants are barred by any applicable law from providing any of this information, Defendants must provide, within 10 business days following receipt of the request, the requested information to the full extent permitted by law and also must provide a written explanation of Defendants' inability to provide the remaining information.

3. At the request of Acquirer, Defendants must promptly make Relevant Personnel available for private interviews with Acquirer during normal business hours at a mutually agreeable location.

4. Defendants must not interfere with any effort by Acquirer to employ any Relevant Personnel. Interference includes, but is not limited to, offering to increase the salary or improve the benefits of Relevant Personnel unless the offer is part of a company-wide increase in salary or benefits that was announced prior to November 11, 2019, or has been approved by the United States, in its sole discretion. Defendants' obligations under this Paragraph IV.I.4. will expire six months after the divestiture of the Divestiture Assets pursuant to this Final Judgment.

5. For Relevant Personnel who elect employment with Acquirer within six months of the date on which the Divestiture Assets are divested to Acquirer, Defendants must waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights, and provide all benefits that those Relevant Personnel otherwise would have been provided had the Relevant Personnel continued employment with Defendants, including, but not limited to, any retention bonuses or payments. Defendants may maintain reasonable restrictions on disclosure by Relevant Personnel of Defendants' proprietary non-public information that is unrelated to the Divestiture Assets and not otherwise required to be disclosed by this Final Judgment.

6. For a period of 12 months from the date on which the Divestiture Assets are divested to Acquirer, Defendants may not solicit to rehire Relevant Personnel who were hired by Acquirer within six months of the date on which the Divestiture Assets are divested to Acquirer unless (a) an individual is terminated or laid off by Acquirer or (b) Acquirer agrees in writing that Defendants may solicit to rehire that individual. Nothing in this Paragraph IV.I.6. prohibits Defendants from advertising employment openings using general solicitations or advertisements and rehiring Relevant Personnel who apply for an employment opening through a general solicitation or advertisement.

J. Defendants must warrant to Acquirer that the New Kona Brewery will be operational and without material defect upon the date of New Brewery Completion.

K. Defendants must warrant to Acquirer that (1) except as provided in Paragraph IV.J. above, the Divestiture Assets will be operational and without material defect on the date of their transfer to Acquirer; (2) there are no material defects in the environmental, zoning, or other permits pertaining to the operation of the Divestiture Assets; and (3) Defendants have disclosed all encumbrances on any part of the Divestiture Assets, including on intangible property. Following the sale of the Divestiture Assets, Defendants must not undertake, directly or indirectly, challenges to the environmental, zoning, or other permits pertaining to the operation of the Divestiture Assets.

L. Defendants must assign, subcontract, or otherwise transfer all contracts, agreements, and customer relationships (or portions of such contracts, agreements, and customer relationships) included in the Divestiture Assets, including all supply and sales contracts, to Acquirer; *provided, however,* that for any contract or agreement that requires the consent of another party to assign, subcontract, or otherwise transfer, Defendants must use best efforts to accomplish the assignment, subcontracting, or transfer. Defendants must not interfere with any negotiations between Acquirer and a contracting party.

M. Defendants must make best efforts to assist Acquirer to obtain all necessary licenses, registrations, and permits to operate Kona Hawaii, including, but not limited to, the New Kona Brewery. Until Acquirer obtains the necessary licenses, registrations, and permits, Defendants must provide Acquirer with the benefit of Defendants' licenses, registrations, and permits to the full extent permissible by law.

N. At the option of Acquirer, and subject to approval by the United States in its sole discretion, on or before the date on which the Divestiture Assets are divested to Acquirer, Defendants must enter into a non-exclusive supply contract or contracts for the production, packaging, and delivery of Beer sufficient to meet Acquirer's needs, as determined by Acquirer, for a period of up to three years, on terms and conditions reasonably related to market conditions for the production, packaging, and delivery of Beer. All amendments to or modifications of any provision of any such supply contract are subject to approval by the United States, in its sole discretion. If the Acquirer is PV Brewing, the Acquirer, in its sole discretion, may renew any such supply contract for two one-year periods. For any Acquirer that is not PV Brewing, the United States, in its sole discretion, may approve one or more extensions of any such supply contract, for a total of up to an additional two years. If Acquirer seeks an extension of the term of any supply contract, Defendants must notify the United States in writing at least two months prior to the date the supply contract expires.

O. At the option of Acquirer, and subject to approval by the United States in its sole discretion, on or before the date on which the Divestiture Assets are divested to Acquirer, the Hawaii WOD must enter into a distribution agreement for distribution of Beer in the State of Hawaii sufficient to meet Acquirer's needs, as determined by Acquirer, for a term determined by Acquirer, on terms

and conditions reasonably related to market conditions for the distribution of Beer in the State of Hawaii. Beginning one year after the effective date of such distribution agreement, Acquirer shall have the right, upon 60 days' written notice to the Hawaii WOD, to terminate without cause that distribution agreement. All amendments to or modifications of any provision of such distribution agreement are subject to approval by the United States, in its sole discretion.

P. At the option of Acquirer, and subject to approval by the United States in its sole discretion, on or before the date on which the Divestiture Assets are divested to Acquirer, Defendants must enter into a contract to provide transition services for finance and accounting services, human resources services, supply and procurement services, brewpub consulting, on-island merchandising, brewing engineering, and information technology services and support, for a period of up to 18 months on terms and conditions reasonably related to market conditions for the provision of the transition services. Any amendments to or modifications of any provision of a contract to provide transition services are subject to approval by the United States, in its sole discretion. Acquirer may terminate a transition services agreement, or any portion of a transition services agreement, without cost or penalty at any time upon commercially reasonable notice. The employee(s) of Defendants tasked with providing transition services must not share any competitively sensitive information of Acquirer with any other employee of Defendants.

Q. If any term of an agreement between Defendants and Acquirer, including, but not limited to, an agreement to effectuate the divestiture required by this Final Judgment, varies from a term of this Final Judgment, to the extent that Defendants cannot fully comply with both, this Final Judgment determines Defendants' obligations.

V. APPOINTMENT OF DIVESTITURE TRUSTEE

A. If Defendants have not divested the Divestiture Assets within the period specified in Paragraph IV.A., Defendants must immediately notify the United States of that fact in writing. Upon application of the United States, which Defendants may not oppose, the Court will appoint a divestiture trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a divestiture trustee by the Court, only the divestiture trustee will have the right to sell the Divestiture Assets. The divestiture trustee will have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States, in its sole discretion, at a price and on terms as are then obtainable upon reasonable effort by the divestiture trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and will have other powers as the Court deems appropriate. The divestiture trustee must sell the Divestiture Assets as quickly as possible.

C. Defendants may not object to a sale by the divestiture trustee on any ground other than malfeasance by the divestiture trustee. Objections by Defendants must be conveyed in writing to the United States and the divestiture trustee within 10 calendar days after the divestiture trustee has provided the notice of proposed divestiture required under Section VI.

D. The divestiture trustee will serve at the cost and expense of Defendants pursuant to a written agreement, on terms and conditions, including confidentiality requirements and conflict of interest certifications, that are approved by the United States.

E. The divestiture trustee may hire at the cost and expense of Defendants any agents or consultants, including, but not limited to, investment bankers, attorneys, and accountants, that are reasonably necessary in the divestiture trustee's judgment to assist with the divestiture trustee's duties. These agents or consultants will be accountable solely to the divestiture trustee and will serve on terms and conditions, including terms and conditions governing confidentiality requirements and conflict-of-interest certifications, that are approved by the United States in its sole discretion.

F. The compensation of the divestiture trustee and agents or consultants hired by the divestiture trustee must be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement that provides the divestiture trustee with incentives based on the price and terms of the divestiture and the speed with which it is accomplished. If the divestiture trustee and Defendants are unable to reach agreement on the divestiture trustee's compensation or other terms and conditions of engagement within 14 calendar days of the appointment of the divestiture trustee by the Court, the United States may, in its sole discretion, take appropriate action, including by making a recommendation to the Court. Within three business days of hiring an agent or consultant, the divestiture trustee must provide written notice of the hiring and rate of compensation to Defendants and the United States.

G. The divestiture trustee must account for all monies derived from the sale of the Divestiture Assets sold by the divestiture trustee and all costs and expenses incurred. Within 30 calendar days of the date of the sale of the Divestiture Assets, the divestiture trustee must submit that accounting to the Court for approval. After approval by the Court of the divestiture trustee's accounting, including fees for unpaid services and those of agents or consultants hired by the divestiture trustee, all remaining money must be paid to Defendants and the trust will then be terminated.

H. Defendants must use their best efforts to assist the divestiture trustee to accomplish the required divestiture. Subject to reasonable protection for trade secrets, other confidential research, development, or commercial information, or any applicable privileges, Defendants must provide the divestiture trustee and agents or consultants retained by the divestiture trustee with full and complete access to all personnel, books, records, and facilities of the Divestiture Assets. Defendants also must provide or develop financial and other information relevant to the Divestiture Assets that the divestiture trustee may reasonably request. Defendants may not take any action to interfere with or to impede the divestiture trustee's accomplishment of the divestiture.

I. The divestiture trustee must maintain complete records of all efforts made to sell the Divestiture Assets, including by filing monthly reports with the United States setting forth the divestiture trustee's efforts to accomplish the divestiture ordered by this Final Judgment. The reports must include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring any interest in the Divestiture Assets and must describe in detail each contact with any such person.

J. If the divestiture trustee has not accomplished the divestiture ordered by this Final Judgment within six months of appointment, the divestiture trustee must promptly provide the United States with a report setting forth: (1) the divestiture trustee's efforts to accomplish the required divestiture; (2) the reasons, in the divestiture trustee's judgment, why the required divestiture has not been accomplished; and (3) the divestiture trustee's recommendations for completing the divestiture. Following receipt of that report, the United States may make additional recommendations consistent with the purpose of the trust to the Court. The Court thereafter may enter such orders as it deems appropriate to carry out the purpose of this Final Judgment, which may include extending the trust and the term of the divestiture trustee's appointment by a period requested by the United States.

K. The divestiture trustee will serve until divestiture of all Divestiture Assets is completed or for a term otherwise ordered by the Court.

L. If the United States determines that the divestiture trustee is not acting diligently or in a reasonably cost-effective manner, the United States may recommend that the Court appoint a substitute divestiture trustee.

VI. NOTICE OF PROPOSED DIVESTITURE

A. Within two business days following execution of a definitive divestiture agreement, Defendants or the divestiture trustee, whichever is then responsible for effecting the divestiture, must notify the United States of a proposed divestiture required by this Final Judgment. If the divestiture trustee is responsible for completing the divestiture, the divestiture trustee also must notify Defendants. The notice must set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets.

B. Within 15 calendar days of receipt by the United States of this notice, the United States may request from Defendants, the proposed Acquirer, other third parties, or the divestiture trustee additional information

concerning the proposed divestiture, the proposed Acquirer, and other prospective Acquirers. Defendants and the divestiture trustee must furnish the additional information requested within 15 calendar days of the receipt of the request unless the United States provides written agreement to a different period.

C. Within 45 calendar days after receipt of the notice required by Paragraph VI.A. or within 20 calendar days after the United States has been provided the additional information requested pursuant to Paragraph VI.B., whichever is later, the United States will provide written notice to Defendants and any divestiture trustee that states whether or not the United States, in its sole discretion, objects to Acquirer or any other aspect of the proposed divestiture. Without written notice that the United States does not object, a divestiture may not be consummated. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Paragraph V.C. of this Final Judgment. Upon objection by Defendants pursuant to Paragraph V.C., a divestiture by the divestiture trustee may not be consummated unless approved by the Court.

D. No information or documents obtained pursuant to this Section VI may be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, including grand-jury proceedings, for the purpose of evaluating a proposed Acquirer or securing compliance with this Final Judgment, or as otherwise required by law.

E. In the event of a request by a third party for disclosure of information under the Freedom of Information Act, 5 U.S.C. § 552, the Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 C.F.R. part 16, including the provision on confidential commercial information, at 28 C.F.R. § 16.7. Persons submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 C.F.R. § 16.7. Designations of confidentiality expire ten years after submission, ''unless the submitter requests and provides justification for a longer designation period.'' *See* 28 C.F.R. § 16.7(b).

F. If at the time that a person furnishes information or documents to the United States pursuant to this Section VI, that person represents and identifies in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' the United States must give that person ten calendar days' notice before divulging the material in any legal proceeding (other than a grand-jury proceeding).

VII. FINANCING

Defendants may not finance all or any part of Acquirer's purchase of all or part of the Divestiture Assets made pursuant to this Final Judgment.

VIII. ASSET PRESERVATION AND HOLD SEPARATE OBLIGATIONS

Until the divestiture required by this Final Judgment has been accomplished, Defendants must take all steps necessary to comply with the Asset Preservation and Hold Separate Stipulation and Order entered by the Court. Defendants must take no action that would jeopardize the divestiture ordered by the Court.

IX. AFFIDAVITS

A. Within 20 calendar days of the filing of the Complaint in this matter, and every 30 calendar days thereafter until the divestiture required by this Final Judgment has been completed, Defendants each must deliver to the United States an affidavit, signed by AB Companies' and CBA's Chief Financial Officer and General Counsel, respectively, describing the fact and manner of Defendants' compliance with this Final Judgment. The United States, in its sole discretion, may approve different signatories for the affidavits.

B. Each affidavit must include: (1) the name, address, and telephone number of each person who, during the preceding 30 calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, an interest in the Divestiture Assets and describe in detail each contact with such persons during that period; (2) a description of the efforts Defendants have taken to solicit buyers for and complete the sale of the Divestiture Assets and to provide required information to prospective Acquirers; and (3) a description of any limitations placed by Defendants on information provided to prospective Acquirers. Objection by the United States to information provided by Defendants to prospective Acquirers must be made within 14 calendar days of receipt of the affidavit, except that the United States may object at any time if the information set forth in the affidavit is not true or complete.

C. Defendants must keep all records of any efforts made to divest the Divestiture Assets until one year after the divestiture has been completed.

D. Within 20 calendar days of the filing of the Complaint in this matter, Defendants also must each deliver to the United States an affidavit signed by AB Companies' and CBA's Chief Financial Officer and General Counsel, respectively, that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. The United States, in its sole discretion, may approve different signatories for the affidavits.

E. If Defendants make any changes to the efforts and actions outlined in any earlier affidavits provided pursuant to Paragraph IX.D., Defendants must, within 15 calendar days after any change is implemented, deliver to the United States an affidavit describing those changes.

F. Defendants must keep all records of any efforts made to preserve the Divestiture Assets until one year after the divestiture has been completed.

G. Within 15 calendar days after New Brewery Completion, Defendants also must each deliver to the United States an affidavit, signed by AB Companies' Chief Financial Officer and General Counsel and CBA's Chief Operating Officer and General Counsel, respectively, describing the fact and manner of Defendants' compliance with (1) New Brewery Completion, and (2) satisfaction of the warranty to Acquirer under Paragraph IV.J., including that the New Kona Brewery is operational and without material defect on the date of New Brewery Completion. The United States, in its sole discretion, may approve different signatories for this affidavit.

X. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment or of related orders such as the Asset Preservation and Hold Separate Stipulation and Order or of determining whether this Final Judgment should be modified or vacated, upon written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, and reasonable notice to Defendants, Defendants must permit, from time to time and subject to legally recognized privileges, authorized representatives, including agents retained by the United States:

(1) to have access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews must be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, Defendants must submit written reports or respond to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained pursuant to this Section X may be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, including grand jury proceedings, for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. In the event of a request by a third party for disclosure of information under the Freedom of Information Act, 5 U.S.C. § 552, the Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 C.F.R. part 16,

including the provision on confidential commercial information, at 28 C.F.R. § 16.7. Defendants submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 C.F.R. § 16.7. Designations of confidentiality expire ten years after submission, ''unless the submitter requests and provides justification for a longer designation period.'' *See* 28 C.F.R. § 16.7(b).

E. If at the time that Defendants furnish information or documents to the United States pursuant to this Section X, Defendants represent and identify in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' the United States must give Defendants ten (10) calendar days' notice before divulging the material in any legal proceeding (other than a grand jury proceeding).

XI. NOTIFICATION

A. Unless a transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the ''HSR Act''), Defendants may not, without first providing at least thirty (30) calendar days advance notification to the United States, directly or indirectly acquire or license a Covered Interest in or from a Covered Entity.

B. Defendants must provide the notification required by this Section XI in the same format as, and in accordance with the instructions relating to, the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended, except that the information requested in Items 5 through 8 of the instructions must be provided only about the brewing, developing, packaging, importing, distributing, marketing, promoting, or selling of Beer in the State of Hawaii.

C. Notification must be provided at least 30 calendar days before acquiring any assets or interest, and must include, beyond the information required by the instructions, the names of the principal representatives who negotiated the transaction on behalf of each party, and all management or strategic plans discussing the proposed transaction. If, within the 30 calendar days following notification, representatives of the United States make a written request for additional information, Defendants may not consummate the proposed transaction until 30 calendar days after submitting all requested information.

D. Early termination of the waiting periods set forth in this Section XI may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section XI must be broadly construed, and any ambiguity or uncertainty regarding whether to file a notice under this Section XI should be resolved in favor of filing notice.

XII. NO REACQUISITION

Defendants may not reacquire any part of or any interest in the Divestiture Assets during the term of this Final Judgment.

XIII. RETENTION OF JURISDICTION

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. ENFORCEMENT OF FINAL JUDGMENT

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendants agree that in a civil contempt action, a motion to show cause, or a similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of this Final Judgment and the appropriateness of a remedy therefor by a preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore the competition the United States alleged was harmed by the challenged conduct. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In an enforcement proceeding in which the Court finds that Defendants have violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with other relief that may be appropriate. In connection with a successful effort by the United States to enforce this Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as all other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

D. For a period of four years following the expiration of this Final Judgment, if the United States has evidence that a Defendant violated this Final Judgment before it expired, the United States may file an action against that Defendant in this Court requesting that the Court order: (1) Defendant to comply with the terms of this Final Judgment for an additional term of at least four years following the filing of the enforcement action; (2) all appropriate contempt remedies; (3) additional relief needed to ensure the Defendant complies with the terms of this Final Judgment; and (4) fees or expenses as called for by this Section XIV.

XV. EXPIRATION OF FINAL JUDGMENT

Unless the Court grants an extension, this Final Judgment will expire 10 years from the date of its entry , except that after five years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestiture has been completed and the continuation of this Final Judgment is no longer necessary or in the public interest.

XVI. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including by making available to the public copies of this Final Judgment and the Competitive Impact Statement, public comments thereon, and the United States' response to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

[Court Approval Subject to Procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16]

_____

United States District Judge

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

United States of America, Plaintiff, v. *Anheuser-Busch INBEV SA/NV, Anheuser-Busch Companies, LLC,* and *Craft Brew Alliance, Inc.*, Defendants.

Civil Action No.: 4:20–cv–01282–SRC
Judge Stephen R. Clark

COMPETITIVE IMPACT STATEMENT

The United States of America, under Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) (the ''APPA'' or ''Tunney Act''), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

On November 11, 2019, Defendant Anheuser-Busch Companies, LLC (''AB Companies''), a minority shareholder in Defendant Craft Brew Alliance, Inc. (''CBA''), agreed to acquire all of CBA's remaining shares in a transaction valued at approximately $220 million. AB Companies is a wholly-owned subsidiary of Defendant Anheuser-Busch InBev SA/NV (''ABI'').

The United States filed a civil antitrust Complaint on September 18, 2020, seeking to enjoin the proposed acquisition. *See* Dkt. No. 1. The Complaint alleges that the proposed acquisition would likely eliminate important head-to-head competition in the state of Hawaii between ABI's beer brands and CBA's beer brands, particularly CBA's Kona brand.

The Complaint alleges that the acquisition would also likely facilitate price coordination. This likely reduction in competition would result in increased prices and reduced innovation for beer consumers in Hawaii. The Complaint thus alleges that the likely effect of this acquisition would be to substantially lessen competition for beer in the state of Hawaii in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

At the same time the Complaint was filed, the United States filed an Asset Preservation and Hold Separate Stipulation and Order (''Stipulation and Order'') and proposed Final Judgment, which are designed to address the anticompetitive effects alleged in the Complaint. *See* Dkt. No. 2. On September 25, 2020, the Court entered the Stipulation and Order. *See* Dkt. No. 14.

Under the proposed Final Judgment, which is explained more fully below, Defendants are required to divest Kona Brewery, LLC (''Kona Hawaii''), which houses CBA's entire Kona brand business in the state of Hawaii, as well as other related tangible and intangible assets. Kona Hawaii competes in the brewing, developing, packaging, importing, distributing, marketing, promoting, and selling of Beer [1] in the state of Hawaii. Its assets include a restaurant, brewery and brewpub, and a new brewery that is currently under construction and scheduled to become operational in the next few months. As part of the divestiture, Defendants are required to provide an exclusive and perpetual license to all intellectual property used or held for use in connection with the brewing, developing, packaging, importing, distributing, marketing, promoting, or selling of Kona products in Hawaii, including the ''Kona'' brand name. Because the competitive harm alleged in the Complaint is centered in the state of Hawaii, the proposed remedy is also centered in the state of Hawaii. The United States has approved PV Brewing Partners, LLC (''PV Brewing''), as the acquirer.

Under the terms of the Stipulation and Order, until the divestiture required by the proposed Final Judgment was accomplished, Defendants were required to take certain steps to ensure that Kona Hawaii was operated as a competitively independent, economically viable, and ongoing business concern, that remained independent and uninfluenced by Defendants, and that competition was maintained during the pendency of the required divestiture. The required divestiture to PV Brewing occurred on October 6, 2020, as permitted under the terms of the Stipulation and Order, which was entered by the Court on September 25, 2020 (*see* Dkt. No. 14).

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendants and the Proposed Transaction

ABI is a corporation organized and existing under the laws of Belgium, with its headquarters in Leuven, Belgium. ABI owns numerous major beer brands sold in the United States, including in Hawaii. These brands include Bud Light, Budweiser, Busch Light, Natural Light, Michelob Ultra, Stella Artois, and Golden Road. AB Companies is a wholly-owned subsidiary of ABI and a Delaware limited liability company with its headquarters in St. Louis, Missouri.

CBA is a corporation organized and existing under the laws of Washington, with its headquarters in Portland, Oregon. CBA owns several beer brands sold in the United States, including Widmer Brothers, Omission, Redhook, and Kona, a brand that originated in Hawaii and is especially popular in that state.

ABI, through its wholly-owned subsidiary AB Companies, currently holds approximately 31% of CBA's outstanding shares, delivers CBA beer brands to wholesalers throughout the United States, and has a contract with CBA to brew some CBA beer brands at ABI breweries. ABI also has the right to appoint two of the eight seats on CBA's Board of Directors.

On November 11, 2019, AB Companies agreed to acquire all of CBA's outstanding shares in a transaction valued at approximately $220 million.

B. Beer Segments and Pricing

Beer brands sold in Hawaii, like those sold in the United States in general, are often segmented based on price and quality. ABI currently groups beer into five segments: value, core, core-plus, premium, and super-premium (listed in order of increasing price and quality). ABI owns beer brands in each beer segment in Hawaii: value (where its brands include Busch Light and Natural Light), core (where its brands include Bud Light and Budweiser), core-plus (where its brands include Michelob Ultra and Bud Light Lime), premium (where its brands include Michelob Ultra Pure Gold), and super-premium (where its brands include Stella Artois and Golden Road). CBA's Kona brand is generally considered a premium beer.

As the Complaint alleges, beer consumers may ''trade up'' or ''trade down'' between segments in response to changes in price. For example, as the prices of core-plus brands approach the prices of premium brands, consumers are increasingly willing to ''trade up'' from core-plus brands to premium brands. Therefore, the Complaint alleges that the competition provided by CBA's Kona in the premium segment serves as an important constraint on the ability of ABI to raise its beer prices not only in the premium segment, but also in core-plus and other beer segments.

C. The Competitive Effects of the Transaction on the Market for Beer in the State of Hawaii

ABI is a global brewing company with the largest beer sales worldwide and in the United States, including in the state of Hawaii. CBA is a national brewing company with the fifth-largest beer sales in Hawaii. As measured by 2019 revenue, ABI accounts for approximately 28% of all beer sales in Hawaii, and CBA accounts for approximately 13% of all beer sales in Hawaii, of which its Kona brand constitutes the vast majority.[2]

ABI's proposed acquisition of CBA would give ABI 100% ownership of CBA, resulting in ABI's total control over all aspects of CBA's competitive decision-making, including pricing, marketing, and promotions. As a result, the Complaint alleges that the transaction would likely eliminate important head-to-head competition between ABI and CBA in Hawaii, and would likely facilitate price coordination following the transaction. The Complaint alleges that this likely reduction in competition would result in increased prices and reduced innovation for beer consumers in Hawaii.

1. The Relevant Market

The Complaint alleges that the relevant product market for analyzing the effects of the proposed acquisition is beer. Beer is usually made from a malted cereal grain, flavored with hops, and brewed via a fermentation process. It is packaged in cans, bottles, and kegs (draft beer). Beer's taste, alcohol content, image (*e.g.*, marketing and consumer perception), price, and other factors make it substantially different from other alcoholic beverages.

The Complaint alleges that other alcoholic beverages, such as wine and distilled spirits, are not reasonable substitutes for beer that would discipline a small but significant and non-transitory increase in the price of beer (*e.g.*, five percent), and relatively few consumers would substantially reduce their beer purchases or turn to alternatives in the event of such a price increase. Therefore, the Complaint alleges that a hypothetical monopolist producer of beer likely would increase its prices by at least a small but significant and non-transitory amount. *See* U.S. Dep't of Justice & Fed. Trade Comm'n, *Horizontal Merger Guidelines* § 4.1.1 (revised Aug. 19, 2010) (''Merger Guidelines''), *https://www.justice.gov/atr/horizontal-merger-guidelines-08192010.*

The Complaint alleges that the relevant geographic market for analyzing the effects of the proposed acquisition is no larger than the state of Hawaii. The relevant geographic market is best defined by the locations of the customers who purchase beer, rather than by the locations of breweries that produce beer. Brewers develop pricing and promotional strategies based on an assessment of local demand for their beer, local competitive conditions, and the local strength of different beer brands. Consumers buy beer near their homes and typically do not travel great distances to buy beer even when prices rise. Consumers in Hawaii are particularly unlikely to travel outside the state to buy beer.

For these reasons, the Complaint alleges that a hypothetical monopolist producer of

[1] In this Competitive Impact Statement, the term ''Beer,'' when capitalized within a sentence, has the same definition as set forth in the proposed Final Judgment at Paragraph II.J. Section III, *infra*, at pgs. 11–12, explains the difference between the terms beer and ''Beer.''

[2] Market share calculations are based on distributor sales in Hawaii.

beer sold in Hawaii likely would find it profitable to increase its prices in that market by at least a small but significant and non-transitory amount because customers could not economically purchase their beer in more distant locations. Therefore, Hawaii is a relevant geographic market and ''section of the country'' within the meaning of Section 7 of the Clayton Act. Thus, the relevant market is beer in the state of Hawaii.

2. The Transaction Would Increase Market Concentration Significantly

The proposed acquisition would increase market concentration significantly for beer in the state of Hawaii. The Complaint alleges that ABI and CBA would have a combined share of approximately 41% in the relevant market following the transaction. Market concentration is often one useful indicator of the level of competitive vigor in a market and the likely competitive effects of a merger. The more concentrated a market, and the more a transaction would increase concentration in a market, the more likely it is that the transaction would result in harm to consumers by meaningfully reducing competition.

Concentration in relevant markets is typically measured by the Herfindahl-Hirschman Index (''HHI''). Markets in which the HHI is between 1,500 and 2,500 are considered moderately concentrated. Mergers that increase the HHI by more than 100 points and result in a moderately concentrated market potentially raise significant competitive concerns. *See* Merger Guidelines § 5.3.

ABI's proposed acquisition of CBA would result in a moderately concentrated market with a post-acquisition HHI of nearly 2,500 points, just below the threshold denoting a highly concentrated market. Moreover, the HHI would increase as a result of the transaction by more than 700 points. These HHI measures potentially raise significant competitive concerns. *See* Merger Guidelines § 5.3.

As the Complaint alleges, these concentration measures likely understate the extent to which the transaction would result in anticompetitive effects such as higher prices and less innovation in the relevant market. As explained in Section II.C.4. below, the Complaint alleges that the market for beer in Hawaii shows signs of vulnerability to coordinated conduct, and the transaction is likely to enhance that vulnerability. Those conditions make the transaction more likely to raise significant competitive concerns than the measures of concentration alone would indicate. *See* Merger Guidelines § 7.1.

3. ABI's Acquisition of CBA Would Eliminate Head-to-Head Competition Between ABI and CBA

The Complaint alleges that ABI and CBA compete directly against each other in Hawaii. In that state, CBA's Kona brand competes closely with ABI's Stella Artois and Michelob Ultra brands, and also competes with ABI's Bud Light and Budweiser brands. Recent developments and product innovations have further enhanced the degree of competition between ABI and CBA. For example, CBA recently introduced Kona Light, a lower calorie brand similar to ABI's low-calorie offerings like Michelob Ultra and Bud Light. CBA's share of the beer market in Hawaii has been among the fastest growing in the state over the past seven years. The Complaint thus alleges that ABI's proposed acquisition of CBA likely would substantially lessen this current head-to-head competition between ABI and CBA in Hawaii, in violation of Section 7 of the Clayton Act.

Moreover, competition between ABI and CBA in Hawaii is poised to increase in the future. The Complaint alleges that CBA is investing in its business in Hawaii, and it has plans to grow its share of beer volume sold in Hawaii by about 25% by 2021. CBA is also constructing a new brewery in Hawaii that is scheduled to become operational in the next few months.

As the Complaint alleges, ABI has plans to grow its share of beer in the premium segment. In recent years, consumer preferences have shifted toward the premium and super-premium segments. Because ABI's positions in the value, core, and core-plus segments are stronger than its positions in the premium and super-premium segments, this trend toward the premium and super-premium segments has threatened ABI's overall market share of beer and made ABI's plans to expand its share of beer in the premium segment more urgent. These plans include the introduction of new premium brands and other brand innovations. CBA's Kona brand is positioned as a premium beer in Hawaii. Therefore, ABI's increased focus on the premium segment would increase competition with CBA's Kona brand.

For these reasons, the Complaint alleges that competition between ABI and CBA in Hawaii likely would grow significantly in the absence of the proposed acquisition. ABI's acquisition of CBA, therefore, is likely to substantially lessen this future potential competition between ABI and CBA, also in violation of Section 7 of the Clayton Act.

4. ABI's Acquisition of CBA Would Facilitate Price Coordination

The Complaint alleges that ABI has historically employed a ''price leadership'' strategy throughout the United States, including in Hawaii. According to this strategy, ABI, with the largest beer sales in the United States and Hawaii, seeks to generate industry-wide price increases by pre-announcing its own price increases and purposefully making those price increases transparent to the market so its primary competitors are more likely to follow its lead. These announced price increases, which can vary by geography because of different competitive conditions, typically cover a broad range of beer brands and packages (*e.g.,* container and size). After announcing price increases, ABI tracks the degree to which its primary competitors follow its price increases. Depending on the competitive response, ABI will either maintain, adjust, or rescind an announced price increase.

The Complaint alleges that, for many years, Molson Coors Beverage Company (''Molson Coors''), the brewer with the second-largest beer sales in the United States and owner of many brands sold in Hawaii such as Miller Lite, Coors Light, and Blue Moon, has followed ABI's announced price increases in Hawaii to a significant degree. Molson Coors's willingness to follow ABI's announced price increases is constrained, however, by the diversion of sales to other competitors who are seeking to gain share, including CBA and its Kona brand.

As alleged in the Complaint, by acquiring CBA, ABI would gain control over Kona's pricing and would likely increase Kona's price, thereby eliminating a significant constraint on Molson Coors's willingness to follow ABI's announced price increases in Hawaii. By reducing Kona's constraint on Molson Coors's willingness to increase prices, the acquisition likely increases the ability of ABI to facilitate price coordination, thereby resulting in higher prices for beer sold in Hawaii. For these reasons, the Complaint alleges that ABI's acquisition of CBA likely would substantially lessen competition in Hawaii in violation of Section 7 of the Clayton Act.

D. Difficulty of Entry or Expansion

As alleged in the Complaint, new entry and expansion by competitors likely will neither be timely nor sufficient in scope to prevent the acquisition's likely anticompetitive effects. Barriers to entry and expansion within the state of Hawaii include: (i) the significant time and expense required to build a brand's reputation; (ii) the substantial sunk costs for promotional and advertising activity needed to secure the distribution and placement of a new entrant's beer in retail outlets; (iii) the considerable time and cost of building new breweries and other facilities; and (iv) the difficulty of developing an effective network of beer distributors with incentives to promote and expand a new entrant's sales.

The Complaint also alleges that the anticompetitive effects of the proposed acquisition are not likely to be eliminated or mitigated by any efficiencies the proposed acquisition may achieve.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestiture required by the proposed Final Judgment will remedy the loss of competition alleged in the Complaint by establishing an independent and economically viable competitor in the market for beer in the state of Hawaii. As described in more detail below, the proposed Final Judgment requires Defendants, within 10 calendar days after the entry of the Stipulation and Order by the Court (to which the United States granted an extension of seven calendar days, *see* Dkt. No. 15), to divest Kona Hawaii, and all tangible and intangible assets related to or used in connection with the brewing, developing, packaging, importing, distributing, marketing, promoting, and selling of Beer in the state of Hawaii. The Stipulation and Order was entered by the Court on September 25, 2020 (*see* Dkt. No. 14), and the required divestiture to PV Brewing occurred on October 6, 2020. The divestiture assets also include an exclusive and perpetual license to Kona intellectual property, including the ''Kona'' brand name. The divestiture will

transfer to PV Brewing the brewing capacity, assets, and rights necessary to compete with ABI brands in Hawaii.

In the proposed Final Judgment, ''Beer'' is defined to include not only brewed products made from malted cereal grain as beer is described in the Complaint, but also ''fermented beverages, brewed or produced from malt, wholly or in part, or from rice, grain of any kind, bran, glucose, sugar, and molasses when such items are used as a substitute for malt, or from honey, fruit, fruit juice, fruit concentrate, herbs, spices, or other food materials'' (excluding distilled alcoholic beverages and wine). This definition in the proposed Final Judgment is necessary because Kona Hawaii currently produces hard seltzer. To the extent PV Brewing produces hard seltzer or innovates other products that fall within the proposed Final Judgment's definition of ''Beer,'' this broader definition will ensure that Defendants' obligations under the proposed Final Judgment extend to those products (*e.g.*, such products would be subject to a distribution agreement per Paragraph IV.O. of the proposed Final Judgment), thus further establishing PV Brewing as an independent and economically viable competitor in the state of Hawaii.

A. Divestiture Assets

Paragraph IV.A. of the proposed Final Judgment requires Defendants to divest to PV Brewing the Divestiture Assets as defined in Paragraphs II.I.1–8 of the proposed Final Judgment. The Divestiture Assets will provide PV Brewing with the facilities, equipment, materials, and legal rights it needs to compete against Defendants and other brewers in Hawaii.

1. Kona Hawaii and the New Brewery

The Divestiture Assets include Kona Hawaii (including its restaurant located in Honolulu, Hawaii, a brewery (with brewing capacity of 10,000 barrels) and brewpub located in Kailua-Kona, Hawaii, and a new brewery also located in Kailua-Kona, Hawaii, that is currently under construction), and all tangible and intangible assets, as described in Paragraphs II.I.1–8 of the proposed Final Judgment, related to or used in connection with Kona Hawaii. Kona Hawaii comprises CBA's entire Kona brand business in the state of Hawaii.

Kona Hawaii's new brewery encompasses 30,000 square feet and is expected to have a brewing capacity of 100,000 barrels, along with canning operations. Once the new brewery is operational, PV Brewing will be able to brew beer and package beer in both kegs and cans for sale in Hawaii. Although ownership of the new brewery transferred to PV Brewing at the time of the divestiture, the new brewery is not yet fully constructed or capable of producing saleable beer. When fully operational, it is expected that the new brewery will produce enough beer to meet present demand for Kona beer packaged in cans and kegs for sale in Hawaii.

Since the new brewery is not yet operational, the proposed Final Judgment requires Defendants to continue construction of the new brewery and to achieve a specific production milestone within 180 calendar days after the Court's entry of the Stipulation and Order. Specifically, under Paragraph IV.B. of the proposed Final Judgment, Defendants must achieve an average production capacity of 1,500 barrels of saleable Beer each calendar week for three consecutive calendar weeks at the new brewery within 180 calendar days after the Court's entry of the Stipulation and Order. In addition, upon achieving this production milestone, under Paragraph IV.J. of the proposed Final Judgment, Defendants must warrant to PV Brewing that the new brewery is operational and without material defect.

If Defendants fail to achieve this production milestone within the 180-day period, beginning on calendar day 181, Defendants shall pay to the United States $25,000 per day until they achieve the proposed Final Judgment's production milestone. The payments beginning on day 181 are designed to incentivize Defendants to promptly satisfy this metric so that PV Brewing can start using the new brewery to brew Kona products for sale in Hawaii.

Requiring Defendants to make incentive payments if they do not meet the proposed Final Judgment's production milestone is appropriate under the specific set of facts presented here because, in order for PV Brewing to successfully replace CBA as a competitor independent of ABI, the new brewery must be operational soon after the divestiture so that PV Brewing can brew Kona products for sale in Hawaii. At PV Brewing's option, the proposed Final Judgment requires Defendants to brew Kona-branded products for PV Brewing while the new brewery is under construction.

2. Kona IP and Brand License

The Divestiture Assets, as defined in Paragraphs II.I.1–8 of the proposed Final Judgment, also include an exclusive, irrevocable, fully paid-up, royalty-free, perpetual license to all intellectual property used or held for use in connection with the brewing, developing, packaging, importing, distributing, marketing, promoting, or selling of Kona products in Hawaii. This Kona license includes intellectual property connected to the ''Kona'' brand name (and all associated trademarks, service marks, and services names). The license applies to all products produced by Defendants using the ''Kona'' brand name at any time after November 11, 2019, and all products produced by PV Brewing using the ''Kona'' brand name at any time in the future. The proposed Final Judgment requires Defendants to license—rather than divest—the Kona intellectual property and brand name because Defendants retain the right to brew, market, and sell Kona-branded products outside of the state of Hawaii.

With this license, PV Brewing will have the exclusive rights to brew, market, and sell Kona products in Hawaii, while Defendants will have those rights outside of Hawaii. For example, with this license, PV Brewing may innovate and develop new beer brand extensions or packages using the Kona brand name and sell them in Hawaii. In addition, at its option, PV Brewing may adopt and sell in Hawaii Kona-branded products that Defendants produce and sell outside of Hawaii. Under the proposed Final Judgment, the license extends beyond Beer. If, for example, PV Brewing wants to sell Kona-branded T-shirts (as CBA does now) to help market and promote its new brewery (or sell Kona-branded salad dressing at its brewpub), it could do so using the license required by the proposed Final Judgment.

The license thus allows PV Brewing to innovate and to adapt to changing market conditions in Hawaii to compete effectively against Defendants in the state of Hawaii.

B. Supply, Distribution, and Transition Services Agreements

As explained below, the proposed Final Judgment also contemplates PV Brewing, at its option, entering into a supply agreement, distribution agreement, and transition services agreement with Defendants to enable it to become an independent and economically viable competitor in the market for beer in the state of Hawaii.

1. Supply Agreement

Until the new brewery in Hawaii is operational, PV Brewing will need to arrange for another brewer to brew its canned and keg beer in order to compete in Hawaii. In addition, CBA does not have the facilities in Hawaii to brew bottled beer; CBA currently brews, or ABI contract brews for CBA, bottled beer outside of Hawaii and ships it to Hawaii. Similarly, post-divestiture, PV Brewing will not have the facilities in Hawaii to brew bottled beer and will need to source bottled beer from outside of Hawaii, to the extent it continues selling bottled beer in Hawaii. Very little beer brewed in Hawaii is bottled in Hawaii because there are no glass beer bottles produced on the islands and importing empty glass bottles is prohibitively expensive.

As a result, at PV Brewing's option, Paragraph IV.N. of the proposed Final Judgment requires Defendants to enter into a non-exclusive supply contract for the production, packaging, and delivery of Beer sufficient to meet PV Brewing's needs, as PV Brewing determines. The supply agreement may be for a period of up to three years and PV Brewing, in its sole discretion, may renew any such supply contract for two one-year periods.

As described in the Complaint, ABI currently contract brews some CBA beer brands, including Kona beer (kegs, cans, and bottles) for CBA to sell in Hawaii. Defendants are thus already familiar with the recipes and brewing processes for Kona brands. Defendants can provide brewing capacity for canned and keg beer until the new brewery in Hawaii is able to produce saleable Beer, and can provide brewing capacity for bottled beer while PV Brewing considers other options.

PV Brewing may contract with other brewers to brew its Beer for sale in Hawaii—in addition to or in lieu of a supply agreement with Defendants. PV Brewing need not purchase minimum or maximum volumes under the supply agreement with Defendants, meaning it can have Defendants brew as little or as much Beer as PV Brewing requires. These provisions give PV Brewing flexibility to source its Kona-branded

products from Defendants or from one of several other mainland brewers that offer contract brewing services.

This supply agreement is also time-limited to ensure that PV Brewing will become a fully independent competitor to Defendants. Lastly, to the extent PV Brewing or Defendants seek to amend or modify any supply agreement, the United States must approve any changes.

2. Distribution Agreement

Beer distributors play an important role in marketing and promoting beer with retailers to help grow beer sales. Thus, effective distribution is important for a brewer to be competitive in the beer industry. As described in the Complaint, ABI currently delivers CBA beer brands to distributors throughout the United States. Anheuser-Busch Sales of Hawaii, Inc., which is AB Companies' wholly-owned distributor in the state of Hawaii (''Hawaii WOD''), currently distributes Kona products, in addition to other CBA products, throughout the state of Hawaii. The Hawaii WOD is the second-largest beer distributor in Hawaii.

At PV Brewing's option, Paragraph IV.O. of the proposed Final Judgment requires the Hawaii WOD to enter into a distribution agreement for distribution of PV Brewing's Beer in the state of Hawaii sufficient to meet PV Brewing's needs, as PV Brewing determines, and for a period of time as determined by PV Brewing. The proposed Final Judgment further requires that under such a distribution agreement, beginning one year after the agreement's effective date, PV Brewing shall have the right, upon 60 days' written notice to the Hawaii WOD, to terminate without cause the distribution agreement.

The proposed Final Judgment thus enables PV Brewing, at its option, to remain with the Hawaii WOD, which has been distributing Kona products throughout the state of Hawaii for some time. It also provides a mechanism by which PV Brewing can terminate the distribution agreement without cause and move to another distributor in Hawaii. With the no-cause-termination provision, the Hawaii WOD will have the incentive to promote and sell Kona products in order to retain the profitable and popular Kona brands in its portfolio. If it fails to perform to PV Brewing's satisfaction, PV Brewing can move its popular Kona products to another distributor in Hawaii.

Lastly, as with the supply agreement, to the extent PV Brewing or Defendants seek to amend or modify any distribution agreement, the United States must approve any changes.

3. Transition Services Agreement

At PV Brewing's option, Paragraph IV.P. of the proposed Final Judgment requires Defendants to enter into a transition services agreement. Under such an agreement, Defendants will provide to PV Brewing transition services for finance and accounting services, human resources services, supply and procurement services, brewpub consulting, on-island merchandising, brewing engineering, and information technology services and support. Transition services as to brewing engineering are particularly important to PV Brewing to ensure that it can run the new brewery and produce saleable Beer—which is critical to PV Brewing competing effectively in Hawaii. Any transition services agreement may last for a period of up to 18 months. PV Brewing may terminate such a transition services agreement (or any portion), without cost or penalty, at any time upon notice to Defendants. This paragraph further provides that employees of Defendants tasked with supporting any transition services agreement must not share any competitively sensitive information of PV Brewing with any other employees of Defendants. Any transition services agreement must be time-limited to incentivize PV Brewing to become a fully independent competitor of Defendants.

Lastly, as with the supply and distribution agreements, to the extent PV Brewing or Defendants seek to amend or modify any transition services agreement, the United States must approve any changes.

C. Other Provisions

In order to preserve competition and facilitate the success of PV Brewing, the proposed Final Judgment contains additional obligations for Defendants.

With the divestiture, PV Brewing will become the owner of Kona Hawaii, which employs personnel that currently operate Kona Hawaii's restaurant and brewery and brewpub, and will also operate the new brewery that is currently under construction. Paragraph IV.I. of the proposed Final Judgment requires Defendants to cooperate with and assist PV Brewing to identify and hire all full-time, part-time, or contract employees of Kona Hawaii, wherever located, whose job responsibilities relate in any way to the brewing, developing, packaging, importing, distributing, marketing, promoting, or selling of Kona products in the state of Hawaii.

In particular, the proposed Final Judgment requires that Defendants provide PV Brewing and the United States with organization charts and information relating to the employees and make employees available for interviews. It also provides that Defendants must not interfere with PV Brewing's retention of those employees. For employees who elect to continue employment with Kona Hawaii, Defendants must waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights, and provide all benefits that the employees would generally have been provided if the employees had continued employment with Defendants. In addition, Paragraph IV.I.6. further provides that the Defendants may not solicit to rehire any employee of Kona Hawaii who was hired by PV Brewing within six months of the divestiture, unless that individual is terminated or laid off by PV Brewing or PV Brewing agrees in writing that the Defendants may solicit to rehire that individual. The non-solicitation period runs for 12 months from the date of the divestiture. These provisions will help ensure that PV Brewing will be able to retain qualified employees for Kona Hawaii.

Section XI of the proposed Final Judgment requires Defendants to notify the United States in advance of executing certain transactions that would not otherwise be reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (''HSR Act''). The transactions covered by these provisions include the acquisition or license of any interest in non-ABI Beer brewing or distribution assets or brands, excluding acquisitions of: (1) a Beer brewery or brand located outside of the state of Hawaii that does not generate at least $3.75 million in annual gross revenue from Beer sold for resale in the state of Hawaii; (2) distribution licenses for non-ABI Beer brands that do not generate at least $1 million in annual gross revenue in the state of Hawaii; and (3) Beer distributors that do not generate at least $1 million in annual gross revenue in the state of Hawaii. This provision significantly broadens Defendants' pre-merger reporting requirements because the $1 million and $3.75 million threshold amounts are significantly lower than the HSR Act's ''size of the transaction'' reporting threshold. Section XI will provide the United States with advance notice of, and an opportunity to evaluate, Defendants' acquisition of both Beer distributors and Beer brewers in the state of Hawaii.

Notification of distributor acquisitions in Hawaii allows the United States to evaluate changes to the Hawaii beer market, including potential implications for PV Brewing's distribution agreement with Defendants. Similarly, notification of brewer acquisitions in Hawaii allows the United States to evaluate any acquisition by ABI of, among other things, craft breweries. ABI has acquired multiple craft breweries over the past several years; some of these acquisitions were not reportable under the HSR Act. Acquisitions of this nature, individually or collectively, have the potential to substantially lessen competition, and the proposed Final Judgment gives the United States an opportunity to evaluate such transactions in advance of their closing even if the purchase price is below the HSR Act's thresholds.[3]

Paragraph XI.B. of the proposed Final Judgment requires Defendants to provide such notification to the Antitrust Division of the United States Department of Justice (''Antitrust Division'') in the same format as, and in accordance with the instructions relating to, the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended. Pursuant to Paragraph XI.C. of the proposed Final Judgment, Defendants must provide such notification at least 30 calendar days prior to acquiring any such interest. If, within the 30-day period after notification,

[3] The Division notes that similar notification obligations apply to ABI by virtue of the Modified Final Judgment in *United States v. Anheuser-Busch InBev SA/NV*, No. 1:16-cv-01483-EGS (D.D.C. 2016), which involved ABI's prior transaction with brewer SABMiller. Under the ABI-SABMiller consent decree, ABI must provide notice of certain distributor and brewer transactions in the United States. The monetary thresholds are higher in the ABI-SABMiller consent decree than in the instant proposed Final Judgment, and the ABI-SABMiller consent decree is set to expire in 2026.

the Antitrust Division makes a written request for additional information, Defendants shall be precluded from consummating the proposed transaction or agreement until 30 calendar days after submitting all requested additional information. Early termination of these waiting periods may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder.

Section XII of the proposed Final Judgment prevents Defendants from reacquiring any part of or interest in the Divestiture Assets during the term of the Final Judgment. Thus, ABI may not seek to reacquire the Kona brand in the state of Hawaii.

Additionally, the proposed Final Judgment also contains provisions designed to promote compliance and make enforcement of the Final Judgment as effective as possible. Paragraph XIV.A. provides that the United States retains and reserves all rights to enforce the Final Judgment, including the right to seek an order of contempt from the Court. Under the terms of this paragraph, Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance with the Final Judgment with the standard of proof that applies to the underlying offense that the Final Judgment addresses.

Paragraph XIV.B. provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment was drafted to restore competition the United States alleged would otherwise be harmed by the transaction. Defendants agree that they will abide by the proposed Final Judgment, and that they may be held in contempt of this Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Paragraph XIV.C. of the proposed Final Judgment provides that if the Court finds in an enforcement proceeding that Defendants have violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the Final Judgment, Paragraph XIV.C. provides that in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendants will reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with any effort to enforce the Final Judgment, including the investigation of the potential violation.

Paragraph XIV.D. states that the United States may file an action against a Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XV of the proposed Final Judgment provides that the Final Judgment will expire ten years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestiture has been completed and that the continuation of the Final Judgment is no longer necessary or in the public interest.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment neither impairs nor assists the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the Federal Register, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the Federal Register.

Written comments should be submitted to:

Robert A. Lepore, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, NW, Suite 8000, Washington, DC 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against AB Companies' acquisition of all of CBA's remaining shares. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will remedy the anticompetitive effects alleged in the Complaint, preserving competition for beer in the state of Hawaii. Thus, the proposed Final Judgment achieves all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States v. Associated Milk Producers, Inc.*, 534 F.2d 113, 117 (8th Cir. 1976) (''It is axiomatic that the Attorney General must retain considerable discretion in controlling government litigation and in determining what is in the public interest.''); *United States v. U.S. Airways Grp., Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable'').

Under the APPA, a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not '' 'make de novo determination of facts and issues.' '' *United States v. W. Elec. Co.*, 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quoting *United States v. Mid-Am. Dairymen, Inc.*, No. 73 CV 681-W-1, 1977 WL 4352, at *9 (W.D. Mo. May 17, 1977)); *see also Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Instead, ''[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General.'' *W. Elec. Co.*, 993 F.2d at 1577 (quotation marks omitted).

''The court should bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest.'' *Microsoft*, 56 F.3d at 1460 (quotation marks omitted); *see also United States v. Deutsche Telekom AG*, No. 19–2232 (TJK), 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020). More demanding requirements would ''have enormous practical consequences for the government's ability to negotiate future settlements,'' contrary to congressional intent. *Id.* at 1456. ''The Tunney Act was not intended to create a disincentive to the use of the consent decree.'' *Id.*; *see also United States v. Mid-Am. Dairymen, Inc.*, No. 73 CV 681-W-1, 1977 WL 4352, at *9 (W.D. Mo. May 17, 1977) (''It was the intention of Congress in enacting [the] APPA to preserve consent decrees as a viable enforcement option in antitrust cases.'').

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g.*, *Microsoft*, 56 F.3d at 1461 (recognizing courts should give ''due respect to the Justice Department's . . . view of the nature of its case''); *United States v. Iron Mountain, Inc.*, 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (''In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'') (internal citations omitted); *United States v. Republic Servs., Inc.*, 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting ''the deferential review to which the government's proposed remedy is accorded''); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (''A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case''); *see also Mid-Am. Dairymen*, 1977 WL 4352, at *9 (''The APPA codifies the case law which established that the Department of Justice has a range of discretion in deciding the terms upon which an antitrust case will be settled''). The ultimate question is whether ''the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *Microsoft*, 56 F.3d at 1461 (*quoting W. Elec. Co.*, 900 F.2d at 309).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 (''[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using consent judgments proposed by the United States in antitrust enforcement, Pub. L. 108-237 § 221, and added the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). ''A court can make its public interest determination based on the competitive impact statement and response to public comments alone.'' *U.S. Airways*, 38 F. Supp. 3d at 76 (citing *Enova Corp.*, 107 F. Supp. 2d at 17).

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: October 26, 2020

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA

JILL C. MAGUIRE (DC#979595)

U.S. Department of Justice, Antitrust Division, Assistant Chief, Healthcare & Consumer Products Section, 450 Fifth Street, NW, Suite 4100, Washington, DC 20530, Tel: (202) 598-8805, Fax: (202) 307-5802, Email: *jill.maguire@usdoj.gov*

[FR Doc. 2020–24056 Filed 10–29–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environemental Response, Compensation and Liability Act

On October 23, 2020, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Montana in the lawsuit entitled *United States* v. *Atlantic Richfield Company,* Civil Action No. CV89–039–BU–SEH.

The proposed Consent Decree would partially resolve claims the United States and State of Montana have brought pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607(a), against the Atlantic Richfield Company related to the Anaconda Smelter National Priorities List Site.

The Consent Decree requires Atlantic Richfield to construct enhanced

remedial elements to address stormwater loading of contaminated sediments to surface water. Atlantic Richfield will remediate two smelter slag piles that have been left at the Site and will assure future operation and maintenance of the Old Works Golf Course in Anaconda, Montana, which was constructed on smelter wastes. In addition, the Consent Decree provides a path to waivers of surface water standards after Atlantic Richfield implements the technically practicable remedy elements outlined in the Consent Decree and its Statement of Work. The estimated cost of the work required under the Consent Decree is $23.7 million. The Consent Decree also requires Atlantic Richfield to provide financial assurances for future cleanup actions. The Consent Decree provides Defendants and certain related persons covenants not to sue under Sections 106, 107(a), and 113(f) of CERCLA, 42 U.S.C. 9606, 9607(a), and 9613(f); Sections 3004(u) and (v), 3008, and 7003 of RCRA, 42 U.S.C. 6924(u) and (v), 6928, and 6973; and Sections 309(b), 311, and 504 of the Clean Water Act, 33 U.S.C. 1319(b), 1321, and 1364.

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 State of Montana* v. *Atlantic Richfield Company,* D.J. Ref. No. 90–11–2–430. 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.

Under section 7003(d) of RCRA, a commenter may request an opportunity for a public meeting in the affected area.

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 $815.50 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy of the Consent Decree without the appendices, the cost is $23.00.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2020–24014 Filed 10–29–20; 8:45 am]

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DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

Construction Recordkeeping and Reporting Requirements; Proposed Renewal of Information Collection Requirements; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA). The program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Federal Contract Compliance Programs (OFCCP) is soliciting comments concerning its proposal to renew the Office of Management and Budget (OMB) approval of the information collection that covers OFCCP's construction recordkeeping and reporting requirements. The current OMB approval for this collection expires on April 30, 2021. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice or by accessing it at *www.regulations.gov.*

DATES: Written comments must be submitted to the office listed in the addresses section below on or before December 29, 2020.

ADDRESSES: You may submit comments, identified by Control Number 1250–0001, by any of the following methods:

Electronic comments: The federal eRulemaking portal at *www.regulations.gov.* Follow the instructions found on that website for submitting comments.

Mail, Hand Delivery, Courier: Addressed to Tina Williams, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW, Room C–3325, Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and OMB Control Number identified above for this information collection. Commenters are strongly encouraged to submit their comments electronically via the *www.regulations.gov* website or to mail their comments early to ensure that they are timely received. Comments, including any personal information provided, become a matter of public record and will be posted to the *www.regulations.gov* website. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Tina Williams, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, Room C–3325, 200 Constitution Avenue NW, Washington, DC 20210. Telephone: (202) 693–0104 (voice) or (202) 693–1337 (TTY) (these are not toll-free numbers). Copies of this notice may be obtained in alternative formats (large print, braille, audio recording) upon request by calling the numbers listed above.

SUPPLEMENTARY INFORMATION:

I. *Background:* OFCCP administers and enforces three equal employment opportunity laws listed below.

- Executive Order 11246, as amended (E.O. 11246)
- Section 503 of the Rehabilitation Act of 1973, as amended (Section 503)
- Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA)

These authorities prohibit employment discrimination by covered federal contractors and subcontractors and require that they take affirmative action to provide equal employment opportunities regardless of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran. Additionally, federal contractors and subcontractors are prohibited from discriminating against applicants and employees for asking about, discussing,

or sharing information about their pay or, in certain circumstances, the pay of their co-workers.

E.O. 11246 applies to federal contractors and subcontractors and to federally assisted construction contractors holding a Government contract in excess of $10,000, or Government contracts that have, or can reasonably be expected to have, an aggregate total value exceeding $10,000 in a 12-month period. E.O. 11246 also applies to government bills of lading, depositories of federal funds in any amount, and to financial institutions that are issuing and paying agents for U.S. savings bonds. Section 503 prohibits employment discrimination against applicants and employees because of physical or mental disability and requires contractors and subcontractors to take affirmative action to employ and advance in employment qualified individuals with disabilities. Section 503 applies to federal contractors and subcontractors with contracts in excess of $15,000. VEVRAA requires contractors to take affirmative action to employ, and advance in employment, qualified protected veterans. VEVRAA applies to federal contractors and subcontractors with contracts of $150,000 or more.

This information collection request (ICR) seeks to renew the recordkeeping and reporting requirements for construction contractors. OFCCP seeks to renew its existing Construction Contract Award Notification Form (Form CC–314), and introduce a new batch upload feature that would enable the submission of multiple notifications at once. Additionally, the instruments associated with Collection 1250–0011 (Construction Compliance Check Letters) have been moved to this collection to centralize the recordkeeping and reporting burden of the two ICRs.

II. *Review Focus:* OFCCP is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the compliance assistance functions of the agency that support the agency's compliance mission, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. *Current Actions:* OFCCP seeks approval of this information collection in order to carry out and enhance its responsibilities to enforce the nondiscrimination and affirmative action provisions of the three legal authorities it administers.

Type of Review: Renewal.

Agency: Office of Federal Contract Compliance Programs.

Title: Construction Recordkeeping and Reporting Requirements.

OMB Number: 1250–0001.

Agency Number: None.

Affected Public: Business or other for-profit entities.

Total Respondents: 12,609 recordkeeping/6,848 reporting.

Total Annual Responses: 12,609 recordkeeping/6,848 reporting.

Average Time per Response: .5 hours, Notification of Subcontract Award; 5 hours, direct federal compliance check letter; 3 hours, federally-assisted compliance check letter.

Estimated Total Burden Hours: 147,720 hours.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $7,555.

Tina Williams,

Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs.

[FR Doc. 2020–24112 Filed 10–29–20; 8:45 am]

BILLING CODE 4510–CM–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Technical Advisory Committee; Notice of Meeting and Agenda

The Bureau of Labor Statistics Technical Advisory Committee will meet on Friday, November 20, 2020. In light of the travel restrictions and social distancing requirements resulting from the COVID–19 outbreak, this meeting will be held virtually from 10 a.m. to 3 p.m. EST.

The Committee presents advice and makes recommendations to the Bureau of Labor Statistics (BLS) on technical aspects of data collection and the formulation of economic measures and makes recommendations on areas of research. The BLS presents issues and then draws on the expertise of Committee members representing specialized fields within the academic disciplines of economics, statistics and data science, and survey design.

The schedule and agenda for the meeting are as follows:

10:00 a.m.—Commissioner's Welcome and Review of Agency Developments
10:30 a.m.—JOLTS Experimental State Estimates Background and Priorities
11:45 p.m.—A Review of Hedonic Price Adjustment Techniques for Products Experiencing Rapid and Complex Quality Change
1:45 p.m.—Confidence Intervals for Preliminary Estimates of Quarterly Labor Productivity
2:45 p.m.—Concluding Remarks
3:00 p.m.—Approximate Conclusion

The meeting is open to the public. Any questions concerning the meeting should be directed to Sarah Dale, Bureau of Labor Statistics Technical Advisory Committee, at *BLSTAC@bls.gov.* Individuals planning to attend the meeting should register at *https://blstac.eventbrite.com.* Individuals who require special accommodations should contact Ms. Dale at least two days prior to the meeting date.

Signed at Washington, DC, this 26th day of October 2020.

Mark Staniorski,

Chief, Division of Management Systems.

[FR Doc. 2020–24118 Filed 10–29–20; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Wage and Hour Division

Agency Information Collection Activities: Comment Request; Information Collections: Requirements of a Bona Fide Thrift or Savings Plan and Requirements of a Bona Fide Profit-Sharing Plan or Trust

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial

resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Wage and Hour Division is soliciting comments concerning the revision to Office of Management and Budget approval of the Information Collections: Requirements of a Bona Fide Thrift or Savings Plan and Requirements of a Bona Fide Profit-Sharing Plan or Trust. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before December 29, 2020.

ADDRESSES: You may submit comments, identified by Control Number 1235–0013, by either one of the following methods:

Email: WHDPRAComments@dol.gov.

Mail, Hand Delivery, Courier: Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW, Washington, DC 20001.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and control number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for Office of Management and Budget approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Robert Waterman, Compliance Specialist, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW, Washington, DC 20001; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TDD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Background

This extension is for the Requirements of a Bona Fide Thrift or Savings Plan and Requirements of a Bona Fide Profit-Sharing Plan or Trust information collection. The information collection requirements apply to employers claiming the overtime exemption available under Fair Labor Standards Act section 7(e)(3)(b), 29 U.S.C. 207(e)(3)(b). Specifically, in calculating an employee's regular rate of pay, an employer need not include contributions made to a bona fide thrift or savings plan or a bona fide profit-sharing plan or trust—as defined in regulations 29 CFR parts 547 and 549. An employer is required to communicate, or to make available to its employees, the terms of the bona fide thrift, savings, or profit-sharing plan or trust and to retain certain records. Fair Labor Standards Act section 11(c) authorizes this information collection. See 29 U.S.C. 211(c).

II. Review Focus

The Department is particularly interested in comments that:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

III. Current Actions

The Department seeks to extend the information collection request for the Requirements of a Bona Fide Thrift or Savings Plan and Requirements of a Bona Fide Profit-Sharing Plan or Trust.

Type of Review: Extension.

Agency: Wage and Hour Division.

Titles: Requirements of a Bona Fide Thrift or Savings Plan and Requirements of a Bona Fide Profit-Sharing Plan or Trust.

OMB Control Number: 1235–0013.

Affected Public: Businesses or other for-profits.

Total Estimated Respondents: 1,505,270.

Total Annual responses: 2,032,115.

Estimated Total Burden Hours: 1,129.

Estimated Time Per Response: The annual burden is estimated to equal two seconds (one second for disclosure and one second for recordkeeping) per new employee.

Frequency: Annual.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Dated: October 26, 2020.

Amy DeBisschop,

Director, Division of Regulations, Legislation, & Interpretation.

[FR Doc. 2020–24037 Filed 10–29–20; 8:45 am]

BILLING CODE 4510–27–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90270; File No. SR–LCH SA–2020–006]

Self-Regulatory Organizations; LCH SA; Notice of Filing of Proposed Rule Change Relating to the Amendments of LCH SA Risk Liquidity Modeling Framework

October 26, 2020.

Pursuant to 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 October 20, 2020, Banque Centrale de Compensation, which conducts business under the name LCH SA (''LCH SA''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by LCH SA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

Banque Centrale de Compensation, which conducts business under the name LCH SA (''LCH SA''), is proposing to amend its Liquidity Risk Modeling Framework (the ''Framework'') in order to address more accurately the liquidity requirements in the event of the assignment and exercise of equity American options (the ''Proposed Rule Change'').

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The text of the proposed rule change has been annexed as Exhibit 5.[3]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, LCH SA 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. LCH SA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 3, 2019, Banque Centrale de Compensation, which conducts business under the name LCH SA (''LCH SA''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[4] and Rule 19b–4 thereunder[5] the filing LCH SA–2019–007 to amend its Framework. This proposed rule change was duly approved by the Commission on January 24, 2020.[6]

LCH SA is now proposing to amend the Framework in order to address one recommendation made by the independent model validation team during the 2018/2019 review.

The purpose of the enhancement is to include, from a liquidity perspective, the funding risk arising from the physical settlement linked to the exercise of American options under stressed liquidity conditions prior to expiry. This is an extension of the scope as American and European options exercise at expiry is already covered by the current approved Framework.

Because equity American options can be exercised before expiry, there is a risk of assignment and exercise of Equity American options at any time before expiry when the 2 largest clearing members in terms of liquidity needs for the covered clearing agency (Cover2 members) may start facing liquidity issues. During that period, the covered clearing agency could, as a result, observe an increase in the liquidity needs linked to the settlement of equity American options. This concern needs to be modelled and tackled within the liquidity coverage ratio (''LCR'') which is the ratio of assets available over the liabilities of LCH SA under the stressed scenario of the default of the 2 largest clearing members (in terms of liquidity needs).

This means that on a daily basis the LCR will identify all the potential positions that are in the money or at the money on the day of the computation and on the next business day as well. Then, given the potential option exercise, it will generate a liquidity need.

In practice, the daily process will work as follows:

- Computation of the liquidity needs coming from the equity American options that are in the money or at the money, by applying no market stress.
- Computation of the liquidity needs coming from the options that are in the money or at the money, by applying a stress scenario to the equities.
- We will select the positions consistent with the 2 largest clearing members in terms of liquidity needs for both modes described above and will retain the most punitive one.
- This amount will then be added to the current cash equity settlement amount in the LCR.

A six month back test from May to November 2019 showed the impact on the LCH SA LCR is less than 0.5% with the largest impact being 0.86% and occurred on the 13th of November 2019. LCR is an internal indicator computed at the clearing house level and there is no specific impact on any particular Clearing Member.

In order to introduce the Proposed Rule Change, LCH SA will need to slightly modify the Framework. The term ''expiry'' will be replaced by ''exercise'' in both sections 5.3.1.3 and 5.3.4 and the term ''at expiry'' will be replaced by ''anytime by defaulting members in order to raise liquidity'' in the paragraph Option Expiry of section 5.3.1.3.

(b) Statutory Basis

LCH SA believes that the Proposed Rule Change is consistent with the requirements of Section 17A of the Securities Exchange Act of 1934[7] (the ''Act'') and the regulations thereunder, including the standards under Rule 17Ad–22.[8] In particular, Section 17(A)(b)(3)(F)[9] of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[10] As described above, LCH SA is proposing to amend the Framework to address specifically LCH SA's liquidity requirements in the event of the assignment and exercise of equity American options involving a Defaulting Clearing Member during any liquidation of such clearing member. The proposed amendment will assist LCH SA in defining more accurately its liquidity requirements by assuring that LCH SA will maintain appropriate levels of liquidity in the event of the assignment and exercise of such American options involving a Defaulting Clearing Member. By anticipating and ensuring that LCH SA meets its liquidity needs in such case, the proposed rule change would help ensure that LCH SA is able to meet its financial obligations and would allow LCH SA to continue to meet its obligation to promptly and accurately clear and settle securities transactions in such situations. By taking into account the funding risk that may arise prior to expiry of American options, the Proposed Rule Change is also helping to safeguard the securities and funds in LCH SA's control and maintain an effective liquidity risk management. For these reasons, LCH SA believes that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act.

Further, Rule 17Ad–22(e)(7) requires a covered clearing agency to ''effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity''.[11]

Regulation 17dA–22(e)(4)(ii) also requires a covered clearing agency that is involved in activities with a more complex risk profile, *e.g.,* that provides clearing services for security-based swaps, to maintain and enforce written policies and procedures reasonably designed to effectively ''measure, monitor, and manage its credit exposures from its payment, clearing and settlement processes'' to assure that it maintains additional financial

[3] All capitalized terms not defined herein have the same definition as in the CDS Clearing Rule Book, Supplement or Procedures, as applicable.

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4

[6] Self-Regulatory Organizations; LCH SA; Order Approving Proposed Rule Change Relating to Amendments to LCH SA's Liquidity Risk Modelling Framework; Exchange Act Release No. 88039 (Jan. 24, 2020), 85 FR 5489 (Jan. 30, 2020) (LCH SA–2019–007).

[7] 15 U.S.C. 78q–1.

[8] 17 CFR 240.17Ad–22.

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 17 CFR 240.17Ad–22(e)(7).

resources to enable it to cover a wide range of foreseeable stress scenarios that include the default of the two participant family clearing members that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions.[12]

As noted above, the amended Framework is designed to enhance LCH SA's to measure, monitor, and manage the liquidity risk that may arise in connection with its activities as a covered clearing agency. As such the amendments to the Framework regarding LCH SA's liquidity requirements in the event of the assignment and exercise of equity American options involving a defaulting clearing member so that LCH SA can also maintain sufficient liquid resources at the minimum in all relevant currencies to effect the relevant settlement process of payment obligations with a higher degree of confidence are consistent with the requirements of Regulation 17dA–22(e)(4)(ii) and 17dA–22(e)(7).[13]

Regulation 17dA–22(e)(4)(i) and (vi)(A) requires a clearing agency to maintain and enforce written policies and procedures reasonably designed to conduct stress testing of its total financial resources once each day using standard predetermined parameters and assumptions to assure that it has sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.[14]

As discussed above, by clarifying the daily process for computation of the liquidity needs coming from the physical settlement linked to the exercise of equity American options under stressed liquidity conditions, the proposed amendments enhance LCH SA's written policies and procedures with regard to stress testing practices and thereby assures that LCH SA maintains sufficient additional financial resources to enable it to cover a wide range of stress scenarios that include the default of the two participant family clearing members that would potentially cause the largest aggregate credit exposure for LCH SA in extreme but plausible market conditions. As such, therefore, the proposed amendments, therefore, are consistent with the requirements of Regulation 17dA–22(e)(4)(i) and (vi)(A).[15]

[12] 17 CFR 240.17Ad–22(e)(4)(ii).

[13] 17 CFR 240.17Ad–22(e)(4)(ii) and 17dA–22(e)(7).

[14] 17 CFR 240.17Ad–22(e)(4)(i) and (vi)(A).

[15] Id.

B. Clearing Agency's Statement on Burden on Competition.

Section 17A(b)(3)(I) of the Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[16] LCH SA does not believe the Proposed Rule Change would have any impact, or impose any burden, on competition. The Proposed Rule Change does not address any competitive issue or have any impact on the competition among central counterparties. LCH SA operates an open access model, and the Proposed Rule Change will have no effect on this model for any clearing member.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. LCH SA will notify the Commission of any written comments received by LCH SA.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–LCH SA–2020–006 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–LCH SA–2020–006. 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 LCH SA and on LCH SA's website at: *https://www.lch.com/resources/rules-and-regulations/proposed-rule-changes-0*.

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–LCH SA–2020–006 and should be submitted on or before November 20, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–24022 Filed 10–29–20; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78q–1(b)(3)(I).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34072; 812–15116]

Managed Portfolio Series and Tortoise Index Solutions, LLC

October 26, 2020.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act, as well as from certain disclosure requirements in rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934 (''1934 Act''), and sections 6–07(2)(a), (b), and (c) of Regulation S–X (''Disclosure Requirements'').

Applicants: Managed Portfolio Series (''Trust''), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series (each a ''Fund'') and Tortoise Index Solutions, LLC (''Initial Adviser''), a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') that serves an investment adviser to the Funds (collectively with the Trust, the ''Applicants'').

Summary of Application: The requested exemption would permit Applicants to enter into and materially amend subadvisory agreements with subadvisers without shareholder approval and would grant relief from the Disclosure Requirements as they relate to fees paid to the subadvisers.

Filing Dates: The application was filed on March 27, 2020, and amended on June 2, 2020.

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 by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request, by email. Hearing requests should be received by the Commission by 5:30 p.m. on November 20, 2020, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Thomas A. Bausch, Managed Portfolio Series, by email: *thomas.bausch@usbank.com* and Tortoise Index Solutions, LLC, by email: *jkruske@tortoiseadvisors.com.*

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel, at (202) 551–6915, or Kaitlin C. Bottock, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number or an Applicant using the ''Company'' name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

I. Requested Exemptive Relief

1. Applicants request an order to permit the Adviser,[1] subject to the approval of the board of trustees of each Trust (collectively, the ''Board''),[2] including a majority of the trustees who are not ''interested persons'' of the Trust or the Adviser, as defined in section 2(a)(19) of the Act (the ''Independent Trustees''), without obtaining shareholder approval, to: (i) Select investment subadvisers (''Subadvisers'') for all or a portion of the assets of one or more of the Funds pursuant to an investment subadvisory agreement with each Subadviser (each a ''Subadvisory Agreement''); and (ii) materially amend Subadvisory Agreements with the Subadvisers.

2. Applicants also request an order exempting the Subadvised Funds (as defined below) from the Disclosure Requirements, which require each Fund to disclose fees paid to a Subadviser. Applicants seek relief to permit each Subadvised Fund to disclose (as a dollar amount and a percentage of the Fund's net assets): (i) The aggregate fees paid to the Adviser and any Wholly-Owned Subadvisers; and (ii) the aggregate fees paid to Affiliated and Non-Affiliated Subadvisers (''Aggregate Fee Disclosure'').[3] Applicants seek an exemption to permit a Subadvised Fund to include only the Aggregate Fee Disclosure.[4]

3. Applicants request that the relief apply to Applicants, as well as to any future Fund and any other existing or future registered open-end management investment company or series thereof that intends to rely on the requested order in the future and that: (i) Is advised by the Adviser; (ii) uses the multi-manager structure described in the application; and (iii) complies with the terms and conditions of the application (each, a ''Subadvised Fund'').[5]

II. Management of the Subadvised Funds

4. The Adviser serves or will serve as the investment adviser to each Subadvised Fund pursuant to an investment advisory agreement with the Fund (each an ''Investment Advisory Agreement''). Each Investment Advisory Agreement has been or will be approved by the Board, including a majority of the Independent Trustees, and by the shareholders of the relevant Subadvised Fund in the manner required by sections 15(a) and 15(c) of the Act. The terms of these Investment Advisory Agreements comply or will comply with section 15(a) of the Act. Applicants are not seeking an exemption from the Act with respect to the Investment Advisory Agreements. Pursuant to the terms of each Investment Advisory Agreement, the Adviser, subject to the oversight of the Board, will provide continuous investment management for each Fund. For its services to each Fund, the Adviser receives or will receive an investment advisory fee from that Fund as specified in the applicable Investment Advisory Agreement.

5. Consistent with the terms of each Investment Advisory Agreement, the

[1] The term ''Adviser'' means (i) the Initial Adviser, (ii) its successors, and (iii) any entity controlling, controlled by or under common control with, the Initial Adviser or its successors that serves as the primary adviser to a Subadvised Fund. For the purposes of the requested order, ''successor'' is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization. Any future Adviser also will be registered with the Commission as an investment adviser under the Advisers Act.

[2] The term ''Board'' also includes the board of trustees or directors of a future Subadvised Fund (as defined below), if different from the board of trustees (''Trustees'') of the Trust.

[3] A ''Wholly-Owned Subadviser'' is any investment adviser that is (1) an indirect or direct ''wholly-owned subsidiary'' (as such term is defined in the Act) of the Adviser, (2) a ''sister company'' of the Adviser that is an indirect or direct ''wholly-owned subsidiary'' of the same company that indirectly or directly wholly owns the Adviser (the Adviser's ''parent company''), or (3) a parent company of the Adviser. An ''Affiliated Subadviser'' is any investment subadviser that is not a Wholly-Owned Subadviser, but is an ''affiliated person'' (as defined in section 2(a)(3) of the Act) of a Subadvised Fund or the Adviser for reasons other than serving as investment subadviser to one or more Funds. A ''Non-Affiliated Subadviser'' is any investment adviser that is not an ''affiliated person'' (as defined in the Act) of a Fund or the Adviser, except to the extent that an affiliation arises solely because the Subadviser serves as a subadviser to one or more Funds.

[4] Applicants note that all other items required by sections 6–07(2)(a), (b) and (c) of Regulation S–X will be disclosed.

[5] All registered open-end investment companies that currently intend to rely on the requested order are named as Applicants. Any entity that relies on the requested order will do so only in accordance with the terms and conditions contained in the application.

Adviser may, subject to the approval of the Board, including a majority of the Independent Trustees, and the shareholders of the applicable Subadvised Fund (if required by applicable law), delegate portfolio management responsibilities of all or a portion of the assets of a Subadvised Fund to a Subadviser. The Adviser will retain overall responsibility for the management and investment of the assets of each Subadvised Fund. This responsibility includes recommending the removal or replacement of Subadvisers, allocating the portion of that Subadvised Fund's assets to any given Subadviser and reallocating those assets as necessary from time to time.[6] The Subadvisers will be ''investment advisers'' to the Subadvised Funds within the meaning of Section 2(a)(20) of the Act and will provide investment management services to the Funds subject to, without limitation, the requirements of Sections 15(c) and 36(b) of the Act.[7] The Subadvisers, subject to the oversight of the Adviser and the Board, will determine the securities and other investments to be purchased, sold or entered into by a Subadvised Fund's portfolio or a portion thereof, and will place orders with brokers or dealers that they select.[8]

6. The Subadvisory Agreements will be approved by the Board, including a majority of the Independent Trustees, in accordance with sections 15(a) and 15(c) of the Act. In addition, the terms of each Subadvisory Agreement will comply fully with the requirements of section 15(a) of the Act. The Adviser may compensate the Subadvisers or the Subadvised Funds may compensate the Subadvisers directly.

7. Subadvised Funds will inform shareholders of the hiring of a new Subadviser pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) Within 90 days after a new Subadviser is hired for any Subadvised Fund, that Fund will send its shareholders either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement; [9] and (b) the Subadvised Fund will make the Multi-manager Information Statement available on the website identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first sent to shareholders, and will maintain it on that website for at least 90 days.[10]

III. Applicable Law

8. Section 15(a) of the Act states, in part, that it is unlawful for any person to act as an investment adviser to a registered investment company ''except pursuant to a written contract, which contract, whether with such registered company or with an investment adviser of such registered company, has been approved by the vote of a majority of the outstanding voting securities of such registered company.''

9. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires a registered investment company to disclose in its statement of additional information the method of computing the ''advisory fee payable'' by the investment company with respect to each investment adviser, including the total dollar amounts that the investment company ''paid to the adviser (aggregated with amounts paid to affiliated advisers, if any), and any advisers who are not affiliated persons of the adviser, under the investment advisory contract for the last three fiscal years.''

10. Rule 20a–1 under the Act requires proxies solicited with respect to a registered investment company to comply with Schedule 14A under the 1934 Act. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fee,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

11. Regulation S–X sets forth the requirements for financial statements required to be included as part of a registered investment company's registration statement and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require a registered investment company to include in its financial statements information about investment advisory fees.

12. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

IV. Arguments in Support of the Requested Relief

13. Applicants assert that, from the perspective of the shareholder, the role of the Subadvisers is substantially equivalent to the limited role of the individual portfolio managers employed by an investment adviser to a traditional investment company. Applicants also assert that the shareholders expect the Adviser, subject to review and approval of the Board, to select a Subadviser who is in the best position to achieve the Subadvised Fund's investment objective. Applicants believe that permitting the Adviser to perform the duties for which the shareholders of the Subadvised Fund are paying the Adviser—the selection, oversight and evaluation of the Subadviser—without incurring unnecessary delays or expenses of convening special meetings of shareholders is appropriate and in the interest of the Fund's shareholders, and will allow such Fund to operate more

[6] Applicants represent that if the name of any Subadvised Fund contains the name of a subadviser, the name of the Adviser that serves as the primary adviser to the Fund, or a trademark or trade name that is owned by or publicly used to identify the Adviser, will precede the name of the subadviser.

[7] The Subadvisers will be registered with the Commission as an investment adviser under the Advisers Act or not subject to such registration.

[8] A ''Subadviser'' also includes an investment subadviser that will provide the Adviser with a model portfolio reflecting a specific strategy, style or focus with respect to the investment of all or a portion of a Subadvised Fund's assets. The Adviser may use the model portfolio to determine the securities and other instruments to be purchased, sold or entered into by a Subadvised Fund's portfolio or a portion thereof, and place orders with brokers or dealers that it selects.

[9] A ''Multi-manager Notice'' will be modeled on a Notice of internet Availability as defined in Rule 14a–16 under the 1934 Act, and specifically will, among other things: (a) Summarize the relevant information regarding the new Subadviser (except as modified to permit Aggregate Fee Disclosure); (b) inform shareholders that the Multi-manager Information Statement is available on a website; (c) provide the website address; (d) state the time period during which the Multi-manager Information Statement will remain available on that website; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-manager Information Statement may be obtained, without charge, by contacting the Subadvised Fund. A ''Multi-manager Information Statement'' will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the 1934 Act for an information statement, except as modified by the requested order to permit Aggregate Fee Disclosure. Multi-manager Information Statements will be filed with the Commission via the EDGAR system.

[10] In addition, Applicants represent that whenever a Subadviser is hired or terminated, or a Subadvisory Agreement is materially amended, the Subadvised Fund's prospectus and statement of additional information will be supplemented promptly pursuant to rule 497(e) under the Securities Act of 1933.

efficiently. Applicants state that each Investment Advisory Agreement will continue to be fully subject to section 15(a) of the Act and approved by the relevant Board, including a majority of the Independent Trustees, in the manner required by section 15(a) and 15(c) of the Act.

14. Applicants submit that the requested relief meets the standards for relief under section 6(c) of the Act. Applicants state that the operation of the Subadvised Fund in the manner described in the Application must be approved by shareholders of that Fund before it may rely on the requested relief. Applicants also state that the proposed conditions to the requested relief are designed to address any potential conflicts of interest or economic incentives, and provide that shareholders are informed when new Subadvisers are hired.

15. Applicants contend that, in the circumstances described in the application, a proxy solicitation to approve the appointment of new Subadvisers provides no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Applicants state that, accordingly, they believe the requested relief is necessary or appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

16. With respect to the relief permitting Aggregate Fee Disclosure, Applicants assert that disclosure of the individual fees paid to the Subadvisers does not serve any meaningful purpose. Applicants contend that the primary reasons for requiring disclosure of individual fees paid to Subadvisers are to inform shareholders of expenses to be charged by a particular Subadvised Fund and to enable shareholders to compare the fees to those of other comparable investment companies. Applicants believe that the requested relief satisfies these objectives because the Subadvised Fund's overall advisory fee will be fully disclosed and, therefore, shareholders will know what the Subadvised Fund's fees and expenses are and will be able to compare the advisory fees a Subadvised Fund is charged to those of other investment companies. In addition, Applicants assert that the requested relief would benefit shareholders of the Subadvised Fund because it would improve the Adviser's ability to negotiate the fees paid to Subadvisers. In particular, Applicants state that if the Adviser is not required to disclose the Subadvisers' fees to the public, the Adviser may be able to negotiate rates that are below a Subadviser's ''posted'' amounts. Applicants assert that the relief will also encourage Subadvisers to negotiate lower subadvisory fees with the Adviser if the lower fees are not required to be made public.

V. Relief for Affiliated Subadvisers

17. The Commission has granted the requested relief with respect to Wholly-Owned and Non-Affiliated Subadvisers through numerous exemptive orders. The Commission also has extended the requested relief to Affiliated Subadvisers.[11] Applicants state that although the Adviser's judgment in recommending a Subadviser can be affected by certain conflicts, they do not warrant denying the extension of the requested relief to Affiliated Subadvisers. Specifically, the Adviser faces those conflicts in allocating fund assets between itself and a Subadviser, and across Subadvisers, as it has an interest in considering the benefit it will receive, directly or indirectly, from the fee the Subadvised Fund pays for the management of those assets. Applicants also state that to the extent the Adviser has a conflict of interest with respect to the selection of an Affiliated Subadviser, the proposed conditions are protective of shareholder interests by ensuring the Board's independence and providing the Board with the appropriate resources and information to monitor and address conflicts.

18. With respect to the relief permitting Aggregate Fee Disclosure, Applicants assert that it is appropriate to disclose only aggregate fees paid to Affiliated Subadvisers for the same reasons that similar relief has been granted previously with respect to Wholly-Owned and Non-Affiliated Subadvisers.

VI. Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Subadvised Fund may rely on the order requested in the Application, the operation of the Subadvised Fund in the manner described in the Application will be, or has been, approved by a majority of the Subadvised Fund's outstanding voting securities as defined in the Act, or, in the case of a Subadvised Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder before such Subadvised Fund's shares are offered to the public.

2. The prospectus for each Subadvised Fund will disclose the existence, substance and effect of any order granted pursuant to the Application. In addition, each Subadvised Fund will hold itself out to the public as employing the multi-manager structure described in the Application. The prospectus will prominently disclose that the Adviser has the ultimate responsibility, subject to oversight by the Board, to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. The Adviser will provide general management services to each Subadvised Fund, including overall supervisory responsibility for the general management and investment of the Subadvised Fund's assets, and subject to review and oversight of the Board, will (i) set the Subadvised Fund's overall investment strategies, (ii) evaluate, select, and recommend Subadvisers for all or a portion of the Subadvised Fund's assets, (iii) allocate and, when appropriate, reallocate the Subadvised Fund's assets among Subadvisers, (iv) monitor and evaluate the Subadvisers' performance, and (v) implement procedures reasonably designed to ensure that Subadvisers comply with the Subadvised Fund's investment objective, policies and restrictions.

4. Subadvised Funds will inform shareholders of the hiring of a new Subadviser within 90 days after the hiring of the new Subadviser pursuant to the Modified Notice and Access Procedures.

5. At all times, at least a majority of the Board will be Independent Trustees, and the selection and nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. Independent Legal Counsel, as defined in Rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

7. Whenever a Subadviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the profitability of the Adviser.

8. The Board must evaluate any material conflicts that may be present in a subadvisory arrangement. Specifically, whenever a subadviser change is proposed for a Subadvised Fund (''Subadviser Change'') or the Board considers an existing Subadvisory

[11] *Carillon Series Trust, et al.,* Investment Co. Act Rel. Nos. 33464 (May 2, 2019) (notice) and 33494 (May 29, 2019) (order).

Agreement as part of its annual review process (''Subadviser Review''):

(a) The Adviser will provide the Board, to the extent not already being provided pursuant to section 15(c) of the Act, with all relevant information concerning:

(i) Any material interest in the proposed new Subadviser, in the case of a Subadviser Change, or the Subadviser in the case of a Subadviser Review, held directly or indirectly by the Adviser or a parent or sister company of the Adviser, and any material impact the proposed Subadvisory Agreement may have on that interest;

(ii) any arrangement or understanding in which the Adviser or any parent or sister company of the Adviser is a participant that (A) may have had a material effect on the proposed Subadviser Change or Subadviser Review, or (B) may be materially affected by the proposed Subadviser Change or Subadviser Review;

(iii) any material interest in a Subadviser held directly or indirectly by an officer or Trustee of the Subadvised Fund, or an officer or board member of the Adviser (other than through a pooled investment vehicle not controlled by such person); and

(iv) any other information that may be relevant to the Board in evaluating any potential material conflicts of interest in the proposed Subadviser Change or Subadviser Review.

(b) the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the Subadviser Change or continuation after Subadviser Review is in the best interests of the Subadvised Fund and its shareholders and, based on the information provided to the Board, does not involve a conflict of interest from which the Adviser, a Subadviser, any officer or Trustee of the Subadvised Fund, or any officer or board member of the Adviser derives an inappropriate advantage.

9. Each Subadvised Fund will disclose in its registration statement the Aggregate Fee Disclosure.

10. In the event that the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the Application, the requested order will expire on the effective date of that rule.

11. Any new Subadvisory Agreement or any amendment to an existing Investment Advisory Agreement or Subadvisory Agreement that directly or indirectly results in an increase in the aggregate advisory fee rate payable by the Subadvised Fund will be submitted to the Subadvised Fund's shareholders for approval.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–24015 Filed 10–29–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission Asset Management Advisory Committee (''AMAC'') will hold a public meeting on Thursday, November 5, 2020 at 9:00 a.m. (ET).

PLACE: The meeting will be conducted by remote means. Members of the public may watch the webcast of the meeting on the Commission's website at *www.sec.gov.*

STATUS: The meeting will begin at 9:00 a.m. (ET) and will be open to the public by webcast on the Commission's website at *www.sec.gov.*

MATTER TO BE CONSIDERED: On October 16, 2020, the Commission issued notice of the meeting (Release No. 34–90211), indicating that the meeting is open to the public and inviting the public to submit written comments to AMAC. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

At the meeting, AMAC will consider recommendations concerning COVID–19 related operational issues.

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: October 28, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–24193 Filed 10–28–20; 11:15 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/09–0466]

Silver Lake Waterman Fund L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 09/09–0466 issued to Silver Lake Waterman Fund L.P. said license is hereby declared null and void.

Small Business Administration.

Donald DeFosset,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2020–24053 Filed 10–29–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice: 11244]

Determination Pursuant to the Foreign Missions Act

Pursuant to the authority vested in the Secretary of State by the laws of the United States including the Foreign Missions Act (22 U.S.C. 4301 *et seq.*) and delegated pursuant to Department of State Delegation of Authority No. 214, dated September 30, 1994, I hereby determine that the representative offices and operations in the United States of the Beijing Review, including their real property and personnel, are a foreign mission within the meaning of 22 U.S.C. 4302(a)(3).

Furthermore, I hereby determine it to be reasonably necessary to protect the interests of the United States to require the representative offices and operations in the United States of the Beijing Review, and their agents or employees acting on their behalf, to comply with the terms and conditions specified by the Department of State's Office of Foreign Missions relating to the above named entities' activities in the United States.

Finally, I determine that the requirement established by Foreign Missions Act Designation and Determination No. 2020–2, dated June 5, 2020, will not be applied to the Beijing Review unless and until further notice.

Clifton C. Seagroves,

Acting Director, Office of Foreign Missions.

[FR Doc. 2020–24089 Filed 10–29–20; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice: 11243]

Determination Pursuant to the Foreign Missions Act

Pursuant to the authority vested in the Secretary of State by the laws of the

United States including the Foreign Missions Act (22 U.S.C. 4301 *et seq.*) and delegated pursuant to Department of State Delegation of Authority No. 214, dated September 30, 1994, I hereby determine that the representative offices and operations in the United States of the Economic Daily, including their real property and personnel, are a foreign mission within the meaning of 22 U.S.C. 4302(a)(3).

Furthermore, I hereby determine it to be reasonably necessary to protect the interests of the United States to require the representative offices and operations in the United States of the Economic Daily, and their agents or employees acting on their behalf, to comply with the terms and conditions specified by the Department of State's Office of Foreign Missions relating to the above named entities' activities in the United States.

Finally, I determine that the requirement established by Foreign Missions Act Designation and Determination No. 2020–2, dated June 5, 2020, will not be applied to the Economic Daily unless and until further notice.

Clifton C. Seagroves,

Acting Director, Office of Foreign Missions.

[FR Doc. 2020–24083 Filed 10–29–20; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice:11240]

Determination Pursuant to the Foreign Missions Act

Pursuant to the authority vested in the Secretary of State by the laws of the United States including the Foreign Missions Act (22 U.S.C. 4301 *et seq.*) and delegated pursuant to Department of State Delegation of Authority No. 214, dated September 30, 1994, I hereby determine that the representative offices and operations in the United States of the Xinmin Evening News, including their real property and personnel, are a foreign mission within the meaning of 22 U.S.C. 4302(a)(3).

Furthermore, I hereby determine it to be reasonably necessary to protect the interests of the United States to require the representative offices and operations in the United States of the Xinmin Evening News, and their agents or employees acting on their behalf, to comply with the terms and conditions specified by the Department of State's Office of Foreign Missions relating to the above named entities' activities in the United States.

Finally, I determine that the requirement established by Foreign Missions Act Designation and Determination No. 2020–2, dated June 5, 2020, will not be applied to the Xinmin Evening News unless and until further notice.

Clifton C. Seagroves,

Acting Director, Office of Foreign Missions.

[FR Doc. 2020–24086 Filed 10–29–20; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice: 11241]

Determination Pursuant to the Foreign Missions Act

Pursuant to the authority vested in the Secretary of State by the laws of the United States including the Foreign Missions Act (22 U.S.C. 4301 *et seq.*) and delegated pursuant to Department of State Delegation of Authority No. 214, dated September 30, 1994, I hereby determine that the representative offices and operations in the United States of the Social Sciences in China Press (SSCP), including their real property and personnel, are a foreign mission within the meaning of 22 U.S.C. 4302(a)(3).

Furthermore, I hereby determine it to be reasonably necessary to protect the interests of the United States to require the representative offices and operations in the United States of the SSCP, and their agents or employees acting on their behalf, to comply with the terms and conditions specified by the Department of State's Office of Foreign Missions relating to the above named entities' activities in the United States.

Finally, I determine that the requirement established by Foreign Missions Act Designation and Determination No. 2020–2, dated June 5, 2020, will not be applied to the SSCP unless and until further notice.

Clifton C. Seagroves,

Acting Director, Office of Foreign Missions.

[FR Doc. 2020–24091 Filed 10–29–20; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice: 11245]

Bureau of Political-Military Affairs, Directorate of Defense Trade Controls: Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Directorate of Defense Trade Controls and the Department of State give notice that the attached Notifications of Proposed Commercial Export Licenses were submitted to the Congress on the dates indicated.

DATES: As shown on each of the 46 letters.

FOR FURTHER INFORMATION CONTACT: Ms. Paula C. Harrison, Directorate of Defense Trade Controls (DDTC), Department of State at (202) 663–3310; or access the DDTC website at *https://www.pmddtc.state.gov/ddtc_public* and select ''Contact DDTC,'' then scroll down to ''Contact the DDTC Response Team'' and select ''Email.'' Please add this subject line to your message, ''ATTN: Congressional Notification of Licenses.''

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act (22 U.S.C. 2776) requires that notifications to the Congress pursuant to sections 36(c) and 36(d) be published in the **Federal Register** in a timely manner. The following comprise recent such notifications and are published to give notice to the public.

April 14, 2020

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(d) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of technical data and defense services for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of technical data and defense services to the UK to support the manufacture of Have Quick II ECCM devices and incorporation into radio equipment.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary Elizabeth Taylor,

Assistant Secretary Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 18–096.

April 14, 2020

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) and (d) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the manufacture of significant military equipment abroad and the export of defense articles, including technical data and defense services, in the amount of $25,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Norway, Canada, Germany, and Australia for the development and integration of Advanced-Medium-Range-Air-to-Air Missile Extended Range (AMRAM–ERs) into the National Advanced Surface-to-Air Missile System (NASAMS) for end-use by the United States.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–044.

April 30, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please fine enclosed a certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of .300 caliber assault rifles, sound suppressors, and major replacement parts to France.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–049.

April 30, 2020
The Honorable Nancy Pelosi, *Speaker of the House Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to the Republic of Korea in support of the F135 propulsion system for end use in the F–35 Lightning II Joint Strike Fighter aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–055.

April 14, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to the Netherlands and the UK to support the manufacture, production, test, and inspection of wiring and fiber optic harnesses for the F–35 JSF aircraft for use by the JSF consortium.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–060.

April 30, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Canada, Germany, the Netherlands, the UK, Italy, and Taiwan to support the design, provision, integration, installation, and test of the Diesel-Electric Submarine Combat Management System for the Taiwan Sea Dragon Life Extension Program.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–064.

June 19, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) and (d) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export for the

manufacture of significant military equipment abroad and the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Australia and the UK to support the design and manufacture of components required to modify Boeing 737–700 aircraft to add Airborne Early Warning and Control (AEW&C).

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–073.

April 14, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Thailand of 5.56mm automatic rifles for end use by the Royal Thai Army.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–079.

June 12, 2020
The Honorable Nancy Pelosi, *Speaker of the House Representatives.*

Dear Madam Speaker:

Pursuant to Sections 36(c) and (d) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the manufacture of significant military equipment abroad and the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export of defense articles, including technical data and defense services, to Poland to support the manufacture of the Sikorsky S–70 model family helicopters.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–081.

April 14, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data, and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to the Dominican Republic to support the manufacture of slip rings, brush blocks, polytwist, torque motors, resolvers, synchros, fiber optic couplers, fiber optic modems, actuators and solenoids.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–082.

June 19, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Australia and the UK for the delivery of E–7 Airborne Early Warning and Control (AEW&C) Wedgetail AEW Mk1 aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–085.

June 30, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Sections 36(c) and (d) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including unclassified technical data, and defense services to Poland to support the manufacture and sustainment of the Patriot M903 Launching Station for the WISLA Patriot Air Defense System.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–086.

April 30, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to the UK and Canada to support the maintenance of F–35 carrier variant (CV) outboard wing assemblies and subassemblies of the forward fuselage, aft fuselage, empennage, wing and control surfaces and conventional edges for the F–35 Lightening II aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–087.

April 30, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data and defense services, in the amount of 100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to the Netherlands and the UK to support the design, manufacture, and integration of the weapons bay door drive system for all variants of the F–35 Lightning II aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–090.

May 5, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to the UAE and Canada to facilitate the sale of Cessna Caravan aircraft modified with reconnaissance equipment and fitted with weapon rails and pylons for the UAE.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–092.

April 14, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(d) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Canada to support the manufacture of the NetCom-V communications (''NetCom'') system and the Secure Digital Intercommunication System (''SDI'').

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–093.

April 14, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Sections 36(c) and (d) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the manufacture of significant military equipment abroad and the export of defense articles, including technical data and defense services, abroad controlled under Category I of the United States Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to India and Israel to support the manufacture, integration, assembly, operation, training, testing, and maintenance of complete M2 .50 caliber machine guns and heavy barrels.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–094.

April 14, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Singapore to support the design, integration, installation, operation, training, testing, maintenance, and support of the F–16 Aircraft Simulators and Air Mission Trainer Stations.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–095.

May 1, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Australia and Saudi Arabia to support the integration, installation, operation, training, testing, maintenance, and repair of the HAWK and Patriot Air Defense Systems.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–097.

April 14, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Germany and Romania to support the integration, installation, operation, training, testing, maintenance, and repair of the TPS–77(E)1 Radar System.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–098.

April 30, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Sections 36(c) and (d) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the manufacture of significant military equipment aboard, and the export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Israel to support the development and manufacture of component parts of component parts of pistols and rifles.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–099.

April 30, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Brazil to support the operation, training, testing, maintenance, and repair of the TPS–B34 Radar Systems for the Brazil Air Force.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 19–102.

April 14, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Japan to support the design, development, engineering, proposal support, operation, testing, training, logistical support, maintenance, and repair of the Identification Friend or Foe (IFF) Systems utilized on Japan Air Force F–15 Fighter aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–103.

April 14, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Thailand of 5.56mm automatic rifles to the Royal Air Force.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–107.

May 13, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Thailand of 5.56mm automatic rifles for end use by the Royal Thai Police.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–108.

April 14, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Austria to support the modernization, upgrade, integration, installation, operation, training, testing, maintenance, and repair of the Austrian Integrated Flight Deck (AIFD) for S–70i Blackhawk Helicopters.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–109.

June 30, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the manufacture of significant military equipment abroad and the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Greece and Poland to support the manufacture, integration, and testing of certain major components of the Patriot Air Defense System.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–110.

May 1, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Sections 36(c) and (d) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the manufacture of significant military equipment abroad and the export of defense articles, including technical data and defense

services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to the Republic of Korea to support the manufacture, delivery, installation, integration, testing, repair, maintenance and future upgrades of the AN/APX–119 Identification Friend or Foe (''IFF'') Mark XIIA/Mode S/Advanced Dependent Surveillance-Broadcast Digital Transponder IFF System.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–112.

June 19, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Oman, Pakistan, and the UK to support the Falcon Eye Project.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–116.

May 1, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Qatar necessary for the delivery, fielding, integration, inspection, maintenance, testing, training, and update of Patriot Air Defense System Fire Units, Spares, and associated products and services.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–119.

June 12, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Australia to support the installation, checkout, test, retrofit, requirements verification, acceptance, operation, maintenance, and logistical support of MESA Radar/IFF subsystems and Follow-On Sustainment Support Services (FOSSS) for the 737 Airborne Early Warning and Control Aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDCT 19–124.

April 30, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Brunei, Poland, and Australia to support the sale of one S–70i helicopter as well as pre- and post-delivery support including spare parts, pilot training, and maintenance training to Brunei.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor.
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–125.

June 12, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) and (d) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the manufacture of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Australia to support the manufacture of AR–10 and AR–15 5.56mm and 7.62mm automatic firearms and components.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–128.

June 12, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms parts and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Qatar of barrel extension assemblies.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–129.

June 30, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Oman of M2 .50 caliber machine guns.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–130.

May 21, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, the Department is transmitting is transmitting certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Thailand of 5.56mm automatic carbines.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–132.

June 12, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Germany and Luxemburg for Patriot Configuration 3+ Radar Sets, Information Coordination Central and Engagement Control Station associated hardware to support the upgrade of German Patriot systems.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–134.

June 8, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Saudi Arabia and Australia to support the integration, installation, operation, training, testing, maintenance, and repair of the emergency equipment and critical spares for the Patriot Air Missile Defense System.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–135.

June 30, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to the UAE, Saudi Arabia, France, and the UK to support the development, integration, installation, operation, training, testing, maintenance, and repair of the Emirati Air Defence Ground Environment—Transformation (EADGE–T) program.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 19–136.

June 19, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Australia and Israel to support the development, distribution and implementation of the Distributed Mission Operations-Combined Center (DMO–C).

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 20–001.

April 30, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Japan to support the integration, installation, operation, training, testing, maintenance, and repair of Mode 5 and Mode S Identify Friend or Foe (IFF) Interrogators.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 20–002.

April 14, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of bolt-action rifles and barreled actions to the UK for commercial resale.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 20–003.

May 1, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Morocco, France, Germany, Italy, Romania and the UK to support the delivery, integration, installation, operation, training, testing, maintenance, logistics support and repair of the TPS–77 Multi-Role Radar (MRR).

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 20–006.

June 12, 2020
The Honorable Nancy Pelosi, *Speaker of House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the UK to support the manufacture of F–35 Lighting II aft fuselage, empennage, and other airframe parts.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 20–009.

June 12, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to the Republic of Korea, the Philippines, and Canada to support the manufacture of unclassified, unpopulated Printed Wiring Boards (PWBs) and Flexible Wiring Boards (FWBs).

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 20–011.

May 11, 2020
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Australia in support of the Multi-Role Electronically Scanned Array Radar and Identify Friend or Foe Mode 5 Upgrade.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Mary Elizabeth Taylor,
Assistant Secretary Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 20–012.

Paula C. Harrison,

Senior Management Analyst, Directorate of Defense Trade Controls, U.S. Department of State.

[FR Doc. 2020–24035 Filed 10–29–20; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 11242]

Determination Pursuant to the Foreign Missions Act

Pursuant to the authority vested in the Secretary of State by the laws of the United States including the Foreign Missions Act (22 U.S.C. 4301 *et seq.*) and delegated pursuant to Department of State Delegation of Authority No. 214, dated September 30, 1994, I hereby determine that the representative offices and operations in the United States of the Jiefang Daily, including their real property and personnel, are a foreign mission within the meaning of 22 U.S.C. 4302(a)(3).

Furthermore, I hereby determine it to be reasonably necessary to protect the interests of the United States to require the representative offices and operations in the United States of the Jiefang Daily, and their agents or employees acting on their behalf, to comply with the terms and conditions specified by the Department of State's Office of Foreign Missions relating to the above named entities' activities in the United States.

Finally, I determine that the requirement established by Foreign Missions Act Designation and Determination No. 2020–2, dated June 5, 2020, will not be applied to the Jiefang Daily unless and until further notice.

Clifton C. Seagroves,

Acting Director, Office of Foreign Missions.

[FR Doc. 2020–24082 Filed 10–29–20; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice: 11239]

Determination Pursuant to the Foreign Missions Act

Pursuant to the authority vested in the Secretary of State by the laws of the United States including the Foreign Missions Act (22 U.S.C. 4301 *et seq.*) and delegated pursuant to Department of State Delegation of Authority No. 214, dated September 30, 1994, I hereby determine that the representative offices and operations in the United States of Yicai Global (also known as China Business Network), including their real property and personnel, are a foreign mission within the meaning of 22 U.S.C. 4302(a)(3).

Furthermore, I hereby determine it to be reasonably necessary to protect the interests of the United States to require the representative offices and operations in the United States of Yicai Global, and their agents or employees acting on their behalf, to comply with the terms and conditions specified by the Department of State's Office of Foreign Missions relating to the above named entities' activities in the United States.

Finally, I determine that the requirement established by Foreign Missions Act Designation and Determination No. 2020–2, dated June 5, 2020, will not be applied to Yicai Global unless and until further notice.

Clifton C. Seagroves,

Acting Director, Office of Foreign Missions.

[FR Doc. 2020–24085 Filed 10–29–20; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to

announce actions taken by Caltrans, that are final. The actions relate to a proposed highway project, the San Jose Creek Bridge Replacement Project on U.S. Route 101 at postmile 21.6, within the City of Goleta, County of Santa Barbara, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions. A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before March 29, 2021. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans, Matt Fowler, Branch Chief, Central Region Environmental, Caltrans District 5, 50 Higuera Street, San Luis Obispo, CA 93401, 805–542–4603, *matt.c.fowler@dot.ca.gov,* Monday—Friday, 9:00 a.m.–5:00 p.m. PDT. For FHWA, contact David Tedrick at (916) 498–5024 or email *david.tedrick@dot.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, FHWA assigned, Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans, have taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California:

San Jose Creek Bridge Replacement Project on U.S. Route 101 at postmile 21.6, within the City of Goleta, County of Santa Barbara, California. Caltrans proposes to replace the existing San Jose Creek Bridge on U.S. route 101 with a new bridge structure. The replacement of the existing bridge is necessary to remove all traces of alkali-silica reactions present in the concrete components of the existing bridge. The presence of alkali-silica reaction progressively compromises the structural integrity of concrete components. The project will also involve construction of a new bridge structure, roadway repaving, guardrail improvements, vegetation removal and habitat restoration within existing Caltrans right-of-way. Temporary construction easements are required for completion of the project. Federal EFIS ID 05–160000073.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (FEA) with Finding of No Significant Impact (FONSI) for the project, approved on September 23, 2020 and in other documents in Caltrans' project records. The FEA, FONSI and other project records are available by contacting Caltrans at the addresses provided above. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4335]
2. The National Historic Preservation Act (NHPA) of 1966 [16 U.S.C. 470(f) *et seq.*]
3. Native American Grave protection and Repatriation Act (NAGPRA) [25 U.S.C. 30001–3013]
4. Clean Water Act [33USC 1344]
5. Federal Endangered Species Act (FESA) [16 U.S.C. 1531–1543]
6. Migratory Bird Treaty Act [16 U.S.C. 760c–760g]
7. Invasive Species Executive Order 11988

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: October 22, 2020.

Rodney Whitfield,

Director, Financial Services, Federal Highway Administration, California Division.

[FR Doc. 2020–24063 Filed 10–29–20; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on a Proposed Highway Project in Wisconsin

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice of limitation on claims for judicial review of actions by FHWA.

SUMMARY: This notice announces actions taken by the FHWA that are final. The actions required by applicable Federal environmental laws relate to a proposed highway project, the South Bridge Connector, in Brown County, Wisconsin. Those actions grant approvals for the project.

DATES: A claim seeking judicial review of the Federal agency actions on the proposed highway project will be barred unless the claim is filed on or before March 29, 2021. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Glenn Fulkerson, Division Administrator, FHWA, 525 Junction Road, Suite 8000, Madison, Wisconsin 53717; telephone: (608) 829–7500. The FHWA Wisconsin Division's normal office hours are 7 a.m. to 4 p.m. Central time. For the Wisconsin Department of Transportation (WisDOT): Scott Lawry, Director, Bureau of Technical Services, WisDOT, 4822 Madison Yards Way, 5th Floor, Madison, Wisconsin 53705; telephone: (608) 266–2186. WisDOT's normal office hours are 7:30 a.m. to 4:30 p.m. Central time.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing approvals for the following highway project: The South Bridge Connector in Brown County, Wisconsin. The purpose of the project is to identify the most appropriate improvements for addressing existing east-west transportation demand and demand that will be generated by the planned development in the southern portion of the Green Bay metropolitan area. The selected alternative is a corridor approximately 6 miles long and 500 feet wide, beginning at the intersection of County EB (Packerland Drive) and County F in the Town of Lawrence, and ending at County X/GV (Monroe Road) in the Town of Ledgeview. From its western terminus, the County EB/F intersection, the route travels on new alignment to connect to a new full-access interchange on I–41. The route continues east on Southbridge Road and Red Maple Road, crosses the Fox River, and continues along Rockland Road. At the intersection of Rockland Road and County PP (South Broadway), the route continues northeast on new alignment and terminates at the intersection of County X and County GV (Monroe Road). The recently-completed environmental study for this project is a Tier 1 Environmental Impact Statement (EIS), and the selected alternative only approves the general (corridor) location for future improvements. The Lead Agencies will need to prepare Tier 2 design and environmental studies before any construction can occur. Even though the Tier 1 Final EIS and Record of Decision (ROD) do not identify a specific final design or build alternative, the current conceptual design for the selected corridor includes a four-lane divided arterial on a combination of new and existing alignment with

shared-use path or sidewalk, a new interchange with I–41 at Southbridge Road, a new bridge over the Fox River, and reconstruction of the County F interchange with I–41.

The actions by FHWA on this project, and the laws under which such actions were taken, are described in the combined Tier 1 Final EIS and ROD, approved on October 16, 2020, and in other documents in the project file. The Lead Agencies prepared the combined Tier 1 Final EIS and ROD as a single document pursuant to 23 U.S.C. 139(n)(2). The Tier 1 Final EIS and ROD and other documents related to project approvals are available by contacting FHWA or WisDOT at the addresses provided above. The combined Tier 1 Final EIS and ROD and other project documents can be viewed and downloaded on the project website: *https://www.browncountywi.gov/departments/planning-and-land-services/planning/south-bridge-connector/.*

This notice applies to all Federal agency decisions as of the issuance date of this notice, and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109, 23 U.S.C. 128, and 23 U.S.C. 139].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 6(f) of the Land and Water Conservation Fund Act of 1965 [16 U.S.C. 4601]; Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966 [54 U.S.C. 306108].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Uniform Relocation Assistance and Real Property Acquisition Act of 1970 [42 U.S.C. 61].

7. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C. 1251– 1376].

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675].

9. *Executive Orders:* E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 11988 Floodplain Management; E.O. 11990 Protection of Wetlands; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 13112 Invasive Species; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 13186 Responsibilities of Federal Agencies to Protect Migratory Birds.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: October 20, 2020.

Glenn Fulkerson,

Division Administrator, FHWA Wisconsin Division, Madison, Wisconsin.

[FR Doc. 2020–23593 Filed 10–29–20; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2008–0066]

Pipeline Safety: Request for Special Permit; Columbia Gulf Transmission, L.L.C.

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice.

SUMMARY: PHMSA is publishing this notice to solicit public comments on a request for a special permit renewal and the addition of special permit segments from the Columbia Gulf Transmission, L.L.C. (CGT). The special permit request is seeking relief from compliance with certain requirements in the Federal pipeline safety regulations. At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the special permit request.

DATES: Submit any comments regarding this special permit request by November 30, 2020.

ADDRESSES: Comments should reference the docket number for this specific special permit request and may be submitted in the following ways:

- *E-Gov website: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two (2) copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov.*

Note: There is a privacy statement published on *http://www.Regulations.gov.* Comments, including any personal information provided, are posted without changes or edits to *http://www.Regulations.gov.*

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of Federal Regulations (CFR) § 190.343, you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Kay McIver, DOT, PHMSA–PHP–80, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

FOR FURTHER INFORMATION CONTACT: *General:* Ms. Kay McIver by telephone at 202–366–0113, or by email at *kay.mciver@dot.gov.*

Technical: Mr. Steve Nanney by telephone at 713–272–2855, or by email at *steve.nanney@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA received a special permit request for the renewal and addition of pipeline segments from CGT seeking a waiver from the requirements of 49 CFR 192.611(a): Change in class location: Confirmation or revision of maximum allowable operating pressure. This special permit is being requested in lieu of pipe replacement or pressure reduction for 41 special permit segments consisting of 9.15 miles in 11 existing special permit segments and an additional 18.51 miles in 30 new special permit segments on the CGT pipeline system. The 27.66 miles of proposed special permit segments are located in Williamson, Davidson, Trousdale, and Wilson Counties, Tennessee. The CGT pipeline class locations in the special permit segments have changed from a Class 1 to a Class 3 location. The CGT pipeline special permit segments are 30-inch and 36-inch diameter pipelines with an existing maximum allowable operating pressure of either 935 pounds per square inch gauge (psig) or 1,007 psig. The installation of the special permit segments occurred between 1953 and 1970.

The special permit request, proposed special permit with conditions, and Draft Environmental Assessment (DEA) for the CGT pipeline are available for review and public comment in Docket No. PHMSA–2008–0066. We invite interested persons to review and submit comments on the special permit request and DEA in the docket. Please include any comments on potential safety and environmental impacts that may result if the special permit is granted. Comments may include relevant data.

Before issuing a decision on the special permit request, PHMSA will evaluate all comments received on or before the comment closing date. Comments received after the closing date will be evaluated, if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment it receives in making its decision to grant or deny this special permit request.

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

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2020–24108 Filed 10–29–20; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation Advisory Board—Notice of Public Meetings

AGENCY: Saint Lawrence Seaway Development Corporation (SLSDC); USDOT.

ACTION: Notice of public meetings.

SUMMARY: This notice announces the public meetings via conference call of the Saint Lawrence Seaway Development Corporation Advisory Board.

DATES: The public meetings will be held on (all times Eastern):

- Tuesday, November 17, 2020 from 2 p.m.–3:30PM EST
  - Requests to attend the meeting must be received by November 2, 2020.
  - Requests for accommodations to a disability must be received by November 2, 2020.
  - If you wish to speak during the meeting, you must submit a written copy of your remarks to SLSDC by November 2, 2020.
  - Requests to submit written materials to be reviewed during the meeting must be received no later than November 2, 2020.
- Tuesday, February 9, 2021 from 2 p.m.–3:30PM EST
  - Requests to attend the meeting must be received by January 25, 2021.
  - Requests for accommodations to a disability must be received by January 25, 2021.
  - If you wish to speak during the meeting, you must submit a written copy of your remarks to SLSDC by January 25, 2021.
  - Requests to submit written materials to be reviewed during the meeting must be received no later than January 25, 2021.

ADDRESS: The meetings will be held via conference call at the SLSDC's Operations location, 180 Andrews Street, Massena, New York 13662.

FOR FURTHER INFORMATION CONTACT: Carrie Lavigne, Chief Counsel, Saint Lawrence Seaway Development Corporation, 1200 New Jersey Avenue SE, Washington, DC 20590; 315–764–3231.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of meetings of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC). The agenda for each meeting is the same and will be as follows:

Tuesday, November 17, 2020 from 2 p.m.–3:30PM EST

Tuesday, February 9, 2021 from 2 p.m.–3:30PM EST

1. Opening Remarks
2. Consideration of Minutes of Past Meeting
3. Quarterly Report
4. Old and New Business
5. Closing Discussion
6. Adjournment

Public Participation

Attendance at the meeting is open to the interested public. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact the person listed under the heading, **FOR FURTHER INFORMATION CONTACT**. There will be three (3) minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for each commenter may be limited. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name, address, and organizational affiliation of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the SLSDC conduct a lottery to determine the speakers. Speakers are requested to submit a written copy of their prepared remarks for inclusion in the meeting records and for circulation to SLSDC Advisory Board members. All prepared remarks submitted will be accepted and considered as part of the meeting's record. Any member of the public may submit a written statement after the meeting deadline, and it will be presented to the committee.

The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on October 27, 2020.

Carrie Lavigne,

Approving Official, Chief Counsel, Saint Lawrence Seaway Development Corporation.

[FR Doc. 2020–24136 Filed 10–29–20; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2020–0204]

Notice of Rights and Protections Available Under the Federal Antidiscrimination and Whistleblower Protection Laws

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: No FEAR Act Notice.

SUMMARY: This Notice implements Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act of 2002). In doing so, the Department of Transportation notifies all employees, former employees, and applicants for Federal employment of the rights and protections available to them under the Federal Anti-discrimination and Whistleblower Protection Laws.

FOR FURTHER INFORMATION CONTACT: Yvette Rivera, Associate Director of the Equity and Access Division (S–32), Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W78–306, Washington, DC 20590, 202–366–5131 or by email at *Yvette.Rivera@dot.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

You may retrieve this document online through the Federal Document Management System at *http://www.regulations.gov.* Electronic retrieval instructions are available under the help section of the website.

No FEAR Act Notice

On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' now recognized as the No FEAR Act (Pub. L. 107–174). One purpose of the Act is to ''require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.'' (Pub. L. 107–174, Summary). In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination'' (Pub. L. 107–174, Title I, General Provisions, section 101(1)). The Act also requires the United States Department of Transportation (USDOT) to issue this Notice to all USDOT employees, former USDOT employees, and applicants for USDOT employment. This Notice informs such individuals of the rights and protections available under Federal antidiscrimination and whistleblower protection laws.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions, or privileges of employment because of race, color, religion, sex, national origin, age, disability, marital status, genetic information, political affiliation, or in retaliation for a protected activity. One or more of the following statutes prohibit discrimination on these bases: 5 U.S.C. 2302(b)(1), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 206(d), 29 U.S.C. 791, 42 U.S.C. 2000e–16 and 2000ff.

If you believe you have experienced unlawful discrimination on the bases of race, color, religion, sex, national origin, age, retaliation, genetic information, and/or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or in the case of a personnel action, within 45 calendar days of the effective date of the action. A directory of EEO officers is available on the Departmental Office of Civil Rights website at *http://www.transportation.gov/civil-rights,* under the ''Contact Us'' tab. You will be offered the opportunity to resolve the matter informally; if you are unable to resolve the matter informally, you can file a formal complaint of discrimination with USDOT (See, *e.g.,* 29 CFR part 1614). Aggrieved parties who complete the informal complaint process are provided with an electronic Individual Complaint of Employment Discrimination Form. During the Public Health Emergency, the Departmental Office of Civil Rights is only accepting the Form electronically or by email at *Patricia.Fields@dot.gov.* Once the Public Health Emergency is over, you may choose to submit the Form electronically, by mail to the EEO Complaints and Investigations Division of the Departmental Office of Civil Rights at 1200 New Jersey Avenue SE, W76–401, Washington, DC 20590, or by Fax to 202–493–2064. You may also contact the EEO Complaints and Investigations Division, Departmental Office of Civil Rights by phone at 202–366–9370 if you need additional assistance.

If you believe you experienced unlawful discrimination based on age, you must either contact an EEO counselor as noted above, or file a civil action in a United States district court under the Age Discrimination in Employment Act against the head of the alleged discriminating agency. If you choose to file a civil action, you must give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 days of the alleged discriminatory action, and not less than 30 days before filing a civil action. You may file such notice in writing with the EEOC via mail at P.O. Box 77960, Washington, DC 20013, the EEOC Public Portal *https://www.eeoc.gov/employees/charge.cfm,* hand delivery at 131 M St. NE, Washington, DC 20507, or by Fax at 202–663–7022.

If you are alleging discrimination based on marital status or political affiliation, you may file a written discrimination complaint with the U.S. Office of Special Counsel (OSC). Form OSC–14 is available online at the OSC website *http://www.osc.gov,* under the tab to file a complaint. Additionally, you can download the form from *https://osc.gov/Resources/Pages/Forms.aspx.* During the Public Health Emergency, OSC is only accepting Form OST–14 electronically. Once the Public Health Emergency is over, you may choose to submit the form electronically or complete Form OSC–14 and mail it to the Complaints Examining Unit, U.S. Office of Special Counsel at 1730 M Street NW, Suite 218, Washington, DC 20036–4505. You also have the option to call the Complaints Examining Unit at 1–800–872–9855 for additional assistance. In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through the USDOT administrative or negotiated grievance procedures, if such procedures apply and are available.

If you are alleging compensation discrimination pursuant to the Equal Pay Act, and wish to pursue your allegations through the administrative process, you must contact an EEO counselor within 45 calendar days of the alleged discriminatory action, as such complaints are processed under EEOC's regulations at 29 CFR part 1614. Alternatively, you may file a civil action in a court of competent jurisdiction within two years, or if the violation is willful, three years of the date of the alleged violation, regardless of whether you pursued any administrative complaint processing. The filing of a complaint or appeal pursuant to 29 CFR part 1614 shall not toll the time for filing a civil action.

Whistleblower Protection Laws

A USDOT employee with authority to take, direct others to take, recommend, or approve any personnel action must not use that authority to take, or fail to take, or threaten to take a personnel action against an employee or applicant because of a disclosure of information by that individual that is reasonably believed to evidence violations of law, rule, or regulation; gross

mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless the disclosure of such information is specifically prohibited by law and such information is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against a USDOT employee or applicant for making a protected disclosure is prohibited (5 U.S.C. 2302(b)(8)). If you believe you are a victim of whistleblower retaliation, you may file a written complaint with the U.S. Office of Special Counsel at 1730 M Street NW, Suite 218, Washington, DC 20036–4505 using Form OSC–11. Alternatively, you may file online through the OSC website at *http://www.osc.gov.* You may also contact the USDOT Office of Inspector General Hotline by phone at 1–800–424–8071, by email at *hotline@oig.dot.gov,* by mail at 1200 New Jersey Avenue SE, West Bldg 7th Floor, Washington, DC 20590, or online at *https://www.oig.dot.gov/hotline.*

Disciplinary Actions

Under existing laws, USDOT retains the right, where appropriate, to discipline a USDOT employee who engages in conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection laws up to and including removal from Federal service. If OSC initiates an investigation under 5 U.S.C. 1214, USDOT must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation (5 U.S.C. 1214). Nothing in the No FEAR Act alters existing laws, or permits an agency to take unfounded disciplinary action against a USDOT employee, or to violate the procedural rights of a USDOT employee accused of discrimination.

Additional Information

For more information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as the appropriate office(s) within your agency (*e.g.,* EEO/civil rights offices, human resources offices, or legal offices). You can find additional information regarding Federal antidiscrimination, whistleblower protection, and retaliation laws at the EEOC website at *http://www.eeoc.gov* and the OSC website at *http://www.osc.gov.*

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands, or reduces any rights otherwise available to any employee, former employee, or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Issued in Washington, DC, on October 27, 2020.

Charles E. James, Sr.,

Director, Departmental Office of Civil Rights, U.S. Department of Transportation.

[FR Doc. 2020–24133 Filed 10–29–20; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request for U.S. Income Tax Return Forms for Individual Taxpayers

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 public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning the burden associated with the U.S. Income Tax Return Forms for Individual Taxpayers.

DATES: Written comments should be received on or before December 29, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the forms should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Individual Taxpayers.

OMB Number: 1545–0074.

Regulation Project Number: Form 1040 and affiliated return forms.

Abstract: IRC sections 6011 & 6012 of the Internal Revenue Code require individuals to prepare and file income tax returns annually. These forms and related schedules are used by individuals to report their income subject to tax and compute their correct tax liability. This information collection request (ICR), covers the actual reporting burden associated with preparing and submitting the prescribed return forms, by individuals required to file Form 1040 and any of its' affiliated forms as explained in the attached table.

Current Actions: There have been changes in regulatory guidance related to various forms approved under this approval package during the past year. There have been additions and removals of forms included in this approval package. It is anticipated that these changes will have an impact on the overall burden and cost estimates requested for this approval package, however these estimates were not finalized at the time of release of this notice. These estimated figures are expected to be available by the release of the 30-comment notice from OMB. This approval package is being submitted for renewal purposes only.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or Households, Farms.

Estimated Number of Respondents: 182,050,000.

Estimated Time per Respondent: 9 hrs. 27 mins.

Estimated Total Annual Burden Hours: 1,721,229,167.

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.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: October 27, 2020.

R. Joseph Durbala,

IRS Tax Analyst.

INDIVIDUAL TAX FORMS

Type	Form No.	Form name	URL	Type	Form No.	Form name	URL
Form	Form 1040	U.S. Individual Tax Return	*https://www.irs.gov/pub/irs-pdf/f1040.pdf.*	Form and Instruction.	Form 8453(SP)	U.S. Individual Income Tax Declaration for an IRS e-file Return (Spanish version).	*https://www.irs.gov/pub/irs-pdf/f8453sp.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i1040gi.pdf.*	Form	Form 8582	Passive Activity Loss Limitation	*https://www.irs.gov/pub/irs-pdf/f8582.pdf.*
Form	Form 1040 Schedule 1.	Form 1040 Schedule 1 Additional Income and Adjustments to Income.	*https://www.irs.gov/pub/irs-pdf/f1040s1.pdf.*	Instruction			*https://www.irs.gov/pub/irs-pdf/i8582.pdf.*
Form	Form 1040 Schedule 1 (SP).	Additional Income and Adjustments to Income in Spanish.	Still under development at the time of release of this notice.	Form	Form 8582–CR	Passive Activity Credit Limitations	*https://www.irs.gov/pub/irs-pdf/f8582cr.pdf.*
Form	Form 1040 Schedule 2.	Form 1040 Schedule 2 Tax	*https://www.irs.gov/pub/irs-pdf/f1040s2.pdf.*	Instruction			*https://www.irs.gov/pub/irs-pdf/i8582cr.pdf.*
Form	Form 1040 Schedule 2 (SP).	Additional Taxes in Spanish	Still under development at the time of release of this notice.	Form	Form 8586	Low-Income Housing Credit	*https://www.irs.gov/pub/irs-pdf/f8586.pdf.*
Form	Form 1040 Schedule 3.	Form 1040 Schedule 3 Nonrefundable Credits.	*https://www.irs.gov/pub/irs-pdf/f1040s3.pdf.*	Form	Form 8594	Asset Acquisition Statement Under Section 1060.	*https://www.irs.gov/pub/irs-pdf/f8594.pdf.*
Form	Form 1040 Schedule 3 (SP).	Additional Credits and Payments in Spanish	Still under development at the time of release of this notice.	Instruction			*https://www.irs.gov/pub/irs-pdf/i8594.pdf.*
Form	Form 1040 Schedule 4.	Form 1040 Schedule 4 Other Taxes	Historical: 2019–05–01.	Form	Form 8606	Nondeductible IRAs	*https://www.irs.gov/pub/irs-pdf/f8606.pdf.*
Form	Form 1040 Schedule 5.	Form 1040 Schedule 5 Other payments and Refundable Credits.	Historical: 2019–05–01.	Instruction			*https://www.irs.gov/pub/irs-pdf/i8606.pdf.*
Form	Form 1040 Schedule 6.	Form 1040 Schedule 6 Foreign Address and Third-Party Designee.	Historical: 2019–05–02.	Form	Form 8609–A	Annual Statement for Low-Income Housing Credit.	*https://www.irs.gov/pub/irs-pdf/f8609a.pdf.*
Form	Form 1040–C	U.S. Departing Alien Income Tax Return	*https://www.irs.gov/pub/irs-pdf/f1040c.pdf.*	Instruction			*https://www.irs.gov/pub/irs-pdf/i8609a.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i1040c.pdf.*	Form and Instruction.	Form 8611	Recapture of Low-Income Housing Credit	*https://www.irs.gov/pub/irs-pdf/f8611.pdf.*
Form	Form 1040 X	Amended U.S. Individual Income Tax Return	*https://www.irs.gov/pub/irs-pdf/f1040x.pdf.*	Form	Form 8615	Tax for Certain Children Who Have Investment Income of More than $1,800.	*https://www.irs.gov/pub/irs-pdf/f8615.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i1040x.pdf.*	Instruction			*https://www.irs.gov/pub/irs-pdf/i8615.pdf.*
Form	Form 1040 NR	U.S. Nonresident Alien Income Tax Return	*https://www.irs.gov/pub/irs-pdf/f1040nr.pdf.*	Form	Form 8621	Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.	*https://www.irs.gov/pub/irs-pdf/f8621.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i1040nr.pdf.*	Instruction			*https://www.irs.gov/pub/irs-pdf/i8621.pdf.*
Form	Form 1040 NR–EZ	U.S. Income Tax Return for Certain Nonresident Aliens with No Dependents.	*https://www.irs.gov/pub/irs-pdf/f1040nre.pdf.*	Form	Form 8621–A	Return by a Shareholder Making Certain Late Elections to End Treatment as a Passive Foreign Investment Company.	*https://www.irs.gov/pub/irs-pdf/f8621a.pdf.*
Instruction	Form 1040 NR–EZ	*https://www.irs.gov/pub/irs-pdf/i1040nre.pdf*	Instruction			*https://www.irs.gov/pub/irs-pdf/i8621a.pdf..*	
Form	Form 1040–PR	Planilla para la Declaracion de la Contribucion Federal sobre el Trabajo por Cuenta Propia (Incluyendo el Credito Tributario Adicional por Hijos para Residentes Bona Fide de Puerto Rico).	*https://www.irs.gov/pub/irs-pdf/f1040pr.pdf.*	Form and Instruction.	Form 8689	Allocation of Individual Income Tax to the Virgin Islands.	*https://www.irs.gov/pub/irs-pdf/f8689.pdf.*
Instruction		Instrucciones para el Formulario 1040–PR, Planilla Para La Declaracion De La Contribucion Federal Sobre El Trabajo Por Cuenta Propia—Puerto Rico.	*https://www.irs.gov/pub/irs-pdf/i1040pr.pdf.*	Form	Form 8697	Interest Computations Under the Look-Back Method for Completed Long-Term Contracts.	*https://www.irs.gov/pub/irs-pdf/f8697.pdf.*
Form	Form 1040–SR	U.S. Income Tax Return for Seniors	*https://www.irs.gov/pub/irs-pdf/f1040s.pdf.*	Instruction			*https://www.irs.gov/pub/irs-pdf/i8697.pdf.*
Form	Form 1040–SS	U.S. Self-Employment Tax Return (Including the Additional Child Tax Credit for Bona Fide Residents of Puerto Rico).	*https://www.irs.gov/pub/irs-pdf/f1040ss.pdf.*	Form	Form 8801	Credit for Prior Year Minimum Tax-Individuals, Estates, and Trusts.	*https://www.irs.gov/pub/irs-pdf/f8801.pdf.*
Instruction		Instructions for Form 1040–SS, U.S. Self-Employment Tax Return (Including the Additional Child Tax Credit for Bona Fide Residents of Puerto Rico).	*https://www.irs.gov/pub/irs-pdf/i1040ss.pdf.*	Instruction			*https://www.irs.gov/pub/irs-pdf/i8801.pdf.*
Form	Schedule A (1040)	Itemized Deductions	*https://www.irs.gov/pub/irs-pdf/f1040sa.pdf.*	Form	Schedule 8812 (Form 1040).	Additional Child Tax Credit	*https://www.irs.gov/pub/irs-pdf/f1040s8.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i1040sca.pdf.*	Instruction		Instructions for Schedule 8812	*https://www.irs.gov/pub/irs-pdf/i1040s8.pdf.*
Form and Instruction.	Schedule B (Form 1040).	Interest and Ordinary Dividends	*https://www.irs.gov/pub/irs-pdf/f1040sb.pdf.*	Form	Schedule 8812(SP) (Form 1040).	Additional Tax Credit (Spanish version)	Still under development at the time of release of this notice.
Form	Schedule C (Form 1040).	Profit or Loss from Business	*https://www.irs.gov/pub/irs-pdf/f1040sc.pdf.*	Instruction		Instructions for Schedule 8812 (Spanish version).	Still under development at the time of release of this notice.
Instruction			*https://www.irs.gov/pub/irs-pdf/i1040sc.pdf.*	Form and Instruction.	Form 8814	Parents' Election to Report Child's Interest and Dividends.	*https://www.irs.gov/pub/irs-pdf/f8814.pdf.*
Form and Instruction.	Schedule C–EZ (Form 1040).	Net Profit from Business	Historical: 2020–02–28.	Form and Instruction.	Form 8815	Exclusion of Interest from Series EE and I U.S. Savings Bonds Issued After 1989.	*https://www.irs.gov/pub/irs-pdf/f8815.pdf.*

INDIVIDUAL TAX FORMS—Continued

Type	Form No.	Form name	URL
Form	Schedule D (Form 1040).	Capital Gains and Losses	*https://www.irs.gov/pub/irs-pdf/f1040sd.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i1040sd.pdf.*
Form	Schedule E (Form 1040).	Supplemental Income and Loss	*https://www.irs.gov/pub/irs-pdf/f1040se.pdf.*
Form and Instruction.	Schedule EIC (Form 1040).	Earned Income Credit	*https://www.irs.gov/pub/irs-pdf/f1040sei.pdf.*
Form	Schedule EIC (SP) (F. 1040).	Earned Income Credit (Spanish version)	Still under development at the time of release of this notice.
Form	Schedule F (Form 1040).	Profit or Loss from Farming	*https://www.irs.gov/pub/irs-pdf/f1040sf.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i1040sf.pdf.*
Form	Schedule H (Form 1040) and Sch H(PR).	Household Employment Taxes	*https://www.irs.gov/pub/irs-pdf/f1040sh.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i1040sh.pdf.*
Form	Schedule J (Form 1040).	Income Averaging for Farmers and Fishermen.	*https://www.irs.gov/pub/irs-pdf/f1040sj.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i1040sj.pdf.*
Form	Schedule LEP	Request for Alternative Language Products by Taxpayers with Limited English Proficiency (LEP).	Still under development at the time of release of this notice.
Form	Schedule LEP (SP)	Schedule LEP Limited English Proficiency (SP).	Still under development at the time of release of this notice.
Form	Schedule R (Form 1040).	Credit for the Elderly or the Disabled	*https://www.irs.gov/pub/irs-pdf/f1040sr.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i1040sr.pdf.*
Form	Schedule SE (Form 1040).	Self-Employment Tax	*https://www.irs.gov/pub/irs-pdf/f1040sse.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i1040sse.pdf.*
Form and Instruction.	Form 1040 V	Payment Voucher	*https://www.irs.gov/pub/irs-pdf/f1040v.pdf.*
Form and Instruction.	Form 1040 ES/OCR	Estimated Tax for Individuals (Optical Character Recognition with Form 1040V).	Form 1040–ES(OCR) contains four estimated tax payment vouchers. Form 1040–ES (OCR) is included in the 2020 Tax Package 1040ES/V mail out.
Form and Instruction.	Form 1040 ES	Estimate Tax for Individuals	*https://www.irs.gov/pub/irs-pdf/f1040es.pdf.*
Form and Instruction.	Form 1040 ES (NR)	U.S. Estimated Tax for Nonresident Alien Individuals.	*https://www.irs.gov/pub/irs-pdf/f1040esn.pdf.*
Form and Instruction.	Form 1040 ES (PR)	Federales Estimadas del Trabajo por Cuenta Propia y sobre el Impleo de Empleados Domestocs-Puerto Rico.	*https://www.irs.gov/pub/irs-pdf/f1040esp.pdf.*
Form	Form 461	Limitation on Business Losses	*https://www.irs.gov/pub/irs-pdf/f461.pdf.*
Instruction		Instructions for Form 461, Limitation on Business Losses.	*https://www.irs.gov/pub/irs-pdf/f461.pdf.*
Form and Instruction.	Form 673	Statement for Claiming Exemption from Withholding on Foreign Earned Income Eligible for the Exclusions Provided by Section 911.	*https://www.irs.gov/pub/irs-pdf/f673.pdf.*
Form	Form 926	Return by a U.S. Transferor of Property to a Foreign Corporation.	*https://www.irs.gov/pub/irs-pdf/f926.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i926.pdf.*
Form	Form 965–A	Individual Report of Net 965 Tax Liability	*https://www.irs.gov/pub/irs-pdf/f965a.pdf.*
Instruction	Form 965–A		*https://www.irs.gov/pub/irs-pdf/i965a.pdf.*
Form	Form 965–C	Transfer Agreement Under 965(h)(3)	*https://www.irs.gov/pub/irs-pdf/f965c.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i965c.pdf.*
Form and Instruction.	Form 970	Application to Use LIFO Inventory Method	*https://www.irs.gov/pub/irs-pdf/f970.pdf.*
Form and Instruction.	Form 972	Consent of Shareholder to Include Specific Amount in Gross Income.	*https://www.irs.gov/pub/irs-pdf/f972.pdf.*
Form and Instruction.	Form 8818	Optional Form to Record Redemption of Series EE and I U.S. Savings Bonds Issued After 1989.	*https://www.irs.gov/pub/irs-pdf/f8818.pdf.*
Form and Instruction.	Form 8820	Orphan Drug Credit	*https://www.irs.gov/pub/irs-pdf/f8820.pdf.*
Form	Form 8824	Like-Kind Exchanges	*https://www.irs.gov/pub/irs-pdf/f8824.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i8824.pdf.*
Form and Instruction.	Form 8826	Disabled Access Credit	*https://www.irs.gov/pub/irs-pdf/f8826.pdf.*
Form	Form 8828	Recapture of Federal Mortgage Subsidy	*https://www.irs.gov/pub/irs-pdf/f8828.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i8828.pdf.*
Form	Form 8829	Expenses for Business Use of Your Home	*https://www.irs.gov/pub/irs-pdf/f8829.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i8829.pdf.*
Form and Instruction.	Form 8833	Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).	*https://www.irs.gov/pub/irs-pdf/f8833.pdf.*
Form	Form 8834	Qualified Electric Vehicle Credit	*https://www.irs.gov/pub/irs-pdf/f8834.pdf.*
Form and Instruction.	Form 8835	Renewable Electricity, Refined Coal, and Indian Coal Production Credit.	*https://www.irs.gov/pub/irs-pdf/f8835.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i8835.pdf.*
Form and Instruction.	Form 8838	Consent to Extend the Time to Assess Tax Under Section 367-Gain Recognition Agreement.	*https://www.irs.gov/pub/irs-pdf/f8838.pdf.*
Form	Form 8839	Qualified Adoption Expenses	*https://www.irs.gov/pub/irs-pdf/f8839.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i8839.pdf.*
Form and Instruction.	Form 8840	Closer Connection Exception Statement for Aliens.	*https://www.irs.gov/pub/irs-pdf/f8840.pdf.*
Form and Instruction.	Form 8843	Statement for Exempt Individuals and Individuals with a Medical Condition.	*https://www.irs.gov/pub/irs-pdf/f8843.pdf.*
Form and Instruction.	Form 8844	Empowerment Zone and Renewal Community Employment Credit.	*https://www.irs.gov/pub/irs-pdf/f8844.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i8844.pdf.*
Form	Form 8845	Indian Employment Credit	*https://www.irs.gov/pub/irs-pdf/f8845.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i8845.pdf.*
Form and Instruction.	Form 8846	Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.	*https://www.irs.gov/pub/irs-pdf/f8846.pdf.*
Form	Form 8853	Archer MSA's and Long-Term Care Insurance Contracts.	*https://www.irs.gov/pub/irs-pdf/f8853.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i8853.pdf.*
Form	Form 8854	Initial and Annual Expatriation Information Statement.	*https://www.irs.gov/pub/irs-pdf/f8854.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i8854.pdf.*
Form	Form 8858	Information Return of U.S. Persons with Respect to Foreign Disregarded Entities.	*https://www.irs.gov/pub/irs-pdf/f8858.pdf.*
Form	Schedule M (Form 8858).	Transactions Between controlled Foreign Disregarded Entity and Filer or Other Related Entities.	*https://www.irs.gov/pub/irs-pdf/f8858sm.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i8858.pdf.*
Form	Form 8859	District of Columbia First-Time Homebuyer Credit.	*https://www.irs.gov/pub/irs-pdf/f8859.pdf.*
Form	Form 8862	Information to Claim Earned Income Credit After Disallowance.	*https://www.irs.gov/pub/irs-pdf/f8862.pdf.*
Form	Form 8862(SP)	Information to Claim Earned Income Credit After Disallowance (Spanish Version).	*https://www.irs.gov/pub/irs-pdf/f8862sp.pdf.*

INDIVIDUAL TAX FORMS—Continued

Type	Form No.	Form name	URL	Type	Form No.	Form name	URL
Form and Instruction.	Form 982	Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment).	https://www.irs.gov/pub/irs-pdf/f982.pdf.	Instruction			https://www.irs.gov/pub/irs-pdf/i8862sp.pdf.
Form	Form 1045	Application for Tentative Refund	https://www.irs.gov/pub/irs-pdf/f1045.pdf.	Form	Form 8863	Education Credits	https://www.irs.gov/pub/irs-pdf/f8863.pdf.
Instruction			https://www.irs.gov/pub/irs-pdf/i1045.pdf.	Instruction			https://www.irs.gov/pub/irs-pdf/i8863.pdf.
Form	Form 1098–F	Fines, Penalties and Other Amounts	https://www.irs.gov/pub/irs-pdf/f1098f.pdf.	Form	Form 8864	Biodiesel and Renewable Diesel Fuels Credit.	https://www.irs.gov/pub/irs-pdf/f8864.pdf.
Instruction		Instructions for Form 1098–F, Fines, Penalties and Other Amounts.	https://www.irs.gov/pub/irs-pdf/i1098f.pdf.	Instruction		Instructions for Form 8864, Biodiesel and Renewable Diesel Fuels Credit.	https://www.irs.gov/pub/irs-pdf/i8864.pdf.
Form	Form 1116	Foreign Tax Credit	https://www.irs.gov/pub/irs-pdf/f1116.pdf.	Form	Form 8865	Return of U.S. Persons with Respect to Certain Foreign Partnerships.	https://www.irs.gov/pub/irs-pdf/f8865.pdf.
Instruction			https://www.irs.gov/pub/irs-pdf/i1116.pdf.	Form	Schedule K–1 (Form 8865).	Partner's Share of Income Deductions, Credits, etc..	https://www.irs.gov/pub/irs-pdf/f8865sk1.pdf.
Form and Instruction.	Form 1127	Application for Extension of Time for Payment of Tax.	https://www.irs.gov/pub/irs-pdf/f1127.pdf.	Form	Schedule O (Form 8865).	Transfer of Property to a Foreign Partnership.	https://www.irs.gov/pub/irs-pdf/f8865so.pdf.
Form	Form 1128	Application to Adopt, Change, or Retain a Tax Year.	https://www.irs.gov/pub/irs-pdf/f1128.pdf.	Form	Schedule P (Form 8865).	Acquisitions, Dispositions, and Changes of Interests in a Foreign Partnership.	https://www.irs.gov/pub/irs-pdf/f8865sp.pdf.
Instruction			https://www.irs.gov/pub/irs-pdf/i1128.pdf.	Instruction			https://www.irs.gov/pub/irs-pdf/i8865.pdf.
Form and Instruction.	Form 1310	Statement of Person Claiming Refund Due to a Deceased Taxpayer.	https://www.irs.gov/pub/irs-pdf/f1310.pdf.	Form	Form 8866	Interest Corporation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method.	https://www.irs.gov/pub/irs-pdf/f8866.pdf.
Form	Form 2106	Employee Business Expenses	https://www.irs.gov/pub/irs-pdf/f2106.pdf.	Instruction			https://www.irs.gov/pub/irs-pdf/i8866.pdf.
Instruction			https://www.irs.gov/pub/irs-pdf/i2106.pdf.	Form 8867		Paid Preparer's Due Diligence Checklist	https://www.irs.gov/pub/irs-pdf/f8867.pdf.
Form and Instruction.	Form 2106–EZ	Unreimbursed Employee Business Expenses.	Historical: 2019–05–09.	Instruction			https://www.irs.gov/pub/irs-pdf/i8867.pdf.
Form and Instruction.	Form 2120	Multiple Support Declaration	https://www.irs.gov/pub/irs-pdf/f2120.pdf.	Form	Form 8873	Extraterritorial Income Exclusion	https://www.irs.gov/pub/irs-pdf/f8873.pdf.
Form	Form 2210	Underpayment of Estimated Tax by Individuals, Estates, and Trusts.	https://www.irs.gov/pub/irs-pdf/f2210.pdf.	Instruction			https://www.irs.gov/pub/irs-pdf/i8873.pdf.
Instruction			https://www.irs.gov/pub/irs-pdf/i2210.pdf.	Form and Instruction.	Form 8874	New Markets Credit	https://www.irs.gov/pub/irs-pdf/f8874.pdf.
Form	Form 2210–F	Underpayment of Estimated Tax by Farmers and Fishermen.	https://www.irs.gov/pub/irs-pdf/f2210f.pdf.	Form and Instruction.	Form 8878	IRS e-file Signature Authorization for Form 4686 or Form 2350.	https://www.irs.gov/pub/irs-pdf/f8878.pdf.
Instruction			https://www.irs.gov/pub/irs-pdf/i2210f.pdf.	Form and Instruction.	Form 8878 SP	Autorizacion de firma para presentar por medio del IRS e-file para el Formulario 4868 (SP) o el Formulario 2350 (SP).	https://www.irs.gov/pub/irs-pdf/f8878sp.pdf.
Form and Instruction.	Form 2350	Application for Extension of Time to File U.S. Income Tax Return.	https://www.irs.gov/pub/irs-pdf/f2350.pdf.	Form and Instruction.	Form 8879	IRS e-file Signature Authorization	https://www.irs.gov/pub/irs-pdf/f8879.pdf.
Form and Instruction.	Form 2350 SP	Solicitud de Prorroga para Presentar la Declaracion del Impuesto Personal sobre el Ingreso de lose Estados Unidos.	https://www.irs.gov/pub/irs-pdf/f2350sp.pdf.	Form and Instruction.	Form 8879 SP	Autorizacion de firm para presentar la Declaracion por medio del IRS e-file.	https://www.irs.gov/pub/irs-pdf/f8879sp.pdf.
Form	Form 2441	Child and Dependent Care Expenses	https://www.irs.gov/pub/irs-pdf/f2441.pdf.	Form and Instruction.	Form 8880	Credit for Qualified Retirement Savings Contributions.	https://www.irs.gov/pub/irs-pdf/f8880.pdf.
Instruction			https://www.irs.gov/pub/irs-pdf/i2441.pdf.	Form and Instruction.	Form 8881	Credit for Small Employer Pensions Plan Startup Costs.	https://www.irs.gov/pub/irs-pdf/f8881.pdf.
Form	Form 2555	Foreign Earned Income	https://www.irs.gov/pub/irs-pdf/f2555.pdf.	Form and Instruction.	Form 8882	Credit for Employer-Provided Childcare Facilities and Services.	https://www.irs.gov/pub/irs-pdf/f8882.pdf.
Instruction			https://www.irs.gov/pub/irs-pdf/i2555.pdf.	Form	Form 8885	Health Coverage Tax Credit	https://www.irs.gov/pub/irs-pdf/f8885.pdf.
Form	Form 2555 EZ	Foreign Earned Income Exclusion	Historical: 2019–04–16.	Instruction			https://www.irs.gov/pub/irs-pdf/i8885.pdf.
Form	Form 3115	Application for Change in Accounting Method.	https://www.irs.gov/pub/irs-pdf/f3115.pdf.	Form	Form 8886	Reportable Transaction Disclosure Statement.	https://www.irs.gov/pub/irs-pdf/f8886.pdf.
Instruction			https://www.irs.gov/pub/irs-pdf/i3115.pdf.	Instruction			https://www.irs.gov/pub/irs-pdf/i8886.pdf.
Form	Form 3468	Investment Credit	https://www.irs.gov/pub/irs-pdf/f3468.pdf.	Form and Instruction.	Form 8888	Direct Deposit of Refund to More than One Account.	https://www.irs.gov/pub/irs-pdf/f8888.pdf.
Instruction			https://www.irs.gov/pub/irs-pdf/i3468.pdf.	Form	Form 8889	Health Savings Accounts (HSAs)	https://www.irs.gov/pub/irs-pdf/f8889.pdf.
Form	Form 3520	Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts.	https://www.irs.gov/pub/irs-pdf/f3520.pdf.	Instruction			https://www.irs.gov/pub/irs-pdf/i8889.pdf.
Instruction			https://www.irs.gov/pub/irs-pdf/i3520.pdf.	Form and Instruction.	Form 8891	Beneficiaries of Certain Canadian Registered Retirement Plans.	https://www.irs.gov/pub/irs-pdf/f8891.pdf.
Form	Form 3800	General Business Credit	https://www.irs.gov/pub/irs-pdf/f3800.pdf.	Form and Instruction.	Form 8896	Low Sulfur Diesel Fuel Production Credit	https://www.irs.gov/pub/irs-pdf/f8896.pdf.
Instruction			https://www.irs.gov/pub/irs-pdf/i3800.pdf.	Form	Form 8898	Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Possession.	https://www.irs.gov/pub/irs-pdf/f8898.pdf.
Form	Form 3903	Moving Expenses	https://www.irs.gov/pub/irs-pdf/f3903.pdf.	Instruction			https://www.irs.gov/pub/irs-pdf/i8898.pdf.
Instruction			https://www.irs.gov/pub/irs-pdf/i3903.pdf.	Form	Form 8900	Qualified Railroad Track Maintenance Credit	https://www.irs.gov/pub/irs-pdf/f8900.pdf.

INDIVIDUAL TAX FORMS—Continued

Type	Form No.	Form name	URL
Form	Form 4070	Employee's Report of Tips to Employer	*https://www.irs.gov/pub/irs-pdf/p1244.pdf.*
Form	Form 4070A	Employee's Daily Record of Tips	*https://www.irs.gov/pub/irs-pdf/p1244.pdf.*
Form	Form 4136	Credit for Federal Tax Paid on Fuels	*https://www.irs.gov/pub/irs-pdf/f4136.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i4136.pdf.*
Form and Instruction.	Form 4137	Social Security and Medicare Tax on Unreported Tip Income.	*https://www.irs.gov/pub/irs-pdf/f4137.pdf.*
Form	Form 4255	Recapture of Investment Credit	*https://www.irs.gov/pub/irs-pdf/f4255.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i4255.pdf.*
Form and Instruction.	Form 4361	Application for Exemption from Self-Employment Tax for Use by Ministers, Members of Religious Orders, and Christian Science Practitioners.	*https://www.irs.gov/pub/irs-pdf/f4361.pdf.*
Form	Form 4562	Depreciation and Amortization	*https://www.irs.gov/pub/irs-pdf/f4562.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i4562.pdf.*
Form and Instruction.	Form 4563	Exclusion of Income for Bona Fide Residents of American Samoa.	*https://www.irs.gov/pub/irs-pdf/f4563.pdf.*
Form	Form 4684	Casualities and Thefts	*https://www.irs.gov/pub/irs-pdf/f4684.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i4684.pdf.*
Form	Form 4797	Sale of Business Property	*https://www.irs.gov/pub/irs-pdf/f4797.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i4797.pdf.*
Form and Instruction.	Form 4835	Farm Rental Income and Expenses	*https://www.irs.gov/pub/irs-pdf/f4835.pdf.*
Form and Instruction.	Form 4852	Substitute for Form W–2, Wage and Tax Statement or Form 1099–R, Distributions from Pension Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc..	*https://www.irs.gov/pub/irs-pdf/f4852.pdf.*
Form and Instruction.	Form 4868	Application for Automatic Extension of Time to File Individual U.S. Income Tax Return.	*https://www.irs.gov/pub/irs-pdf/f4868.pdf.*
Form and Instruction.	Form 4868 SP	Solicitud de Prorroga Automatica para Presentar la Declaracion del Impuesto sobre el Ingreso Personal de los Estados Unidos.	*https://www.irs.gov/pub/irs-pdf/f4868sp.pdf.*
Form and Instruction.	Form 4952	Investment Interest Expense Deduction	*https://www.irs.gov/pub/irs-pdf/f4952.pdf.*
Form and Instruction.	Form 4970	Tax on Accumulation Distribution of Trusts	*https://www.irs.gov/pub/irs-pdf/f4970.pdf.*
Form and Instruction.	Form 4972	Tax on Lump-Sum Distributions	*https://www.irs.gov/pub/irs-pdf/f4972.pdf.*
Form and Instruction.	Form 5074	Allocation of Individual Income Tax to Guam or the Commonwealth of the Northern Mariana Islands (CNMI).	*https://www.irs.gov/pub/irs-pdf/f5074.pdf.*
Form and Instruction.	Form 5213	Election to Postpone Determination as to Whether the Presumption Applies that an Activity is Engaged in for Profit.	*https://www.irs.gov/pub/irs-pdf/f5213.pdf.*
Form	Form 5329	Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts.	*https://www.irs.gov/pub/irs-pdf/f5329.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i5329.pdf.*
Form	Form 5405	First-Time Homebuyer Credit	*https://www.irs.gov/pub/irs-pdf/f5405.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i5405.pdf.*
Form	Form 5471	Information Return of U.S. Persons with Respect to Certain Foreign Corporations.	*https://www.irs.gov/pub/irs-pdf/f5471.pdf.*
Form	Schedule J (Form 5471).	Accumulated Earnings and Profits (E&P) and Taxes of Controlled Foreign Corporations.	*https://www.irs.gov/pub/irs-pdf/f5471sj.pdf.*
Form	Schedule M (Form 5471).	Transactions Between Controlled Foreign Corporation and Shareholders or Other Related Persons.	*https://www.irs.gov/pub/irs-pdf/f5471sm.pdf.*
Form	Schedule O (Form 5471).	Organization or Reorganization of Foreign Corporation, and Acquisitions and Dispositions of its Stock.	*https://www.irs.gov/pub/irs-pdf/f5471so.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i5471.pdf.*
Form	Form 5695	Residential Energy Credits	*https://www.irs.gov/pub/irs-pdf/f5695.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i5695.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i8900.pdf.*
Form	Form 8903	Domestic Production Activities Deduction	*https://www.irs.gov/pub/irs-pdf/f8903.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i8903.pdf.*
Form and Instruction.	Form 8906	Distills Spirits Credit	*https://www.irs.gov/pub/irs-pdf/f8906.pdf.*
Form	Form 8908	Energy Efficient Home Credit	*https://www.irs.gov/pub/irs-pdf/f8908.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i8908.pdf.*
Form	Form 8910	Alternative Motor Vehicle Credit	*https://www.irs.gov/pub/irs-pdf/f8910.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i8910.pdf.*
Form	Form 8911	Alternative Fuel Vehicle Refueling Property Credit.	*https://www.irs.gov/pub/irs-pdf/f8911.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i8911.pdf.*
Form and Instruction.	Form 8912	Credit to Holders of Tax Credit Bonds	*https://www.irs.gov/pub/irs-pdf/f8912.pdf.*
Instruction	Form 8912		*https://www.irs.gov/pub/irs-pdf/i8912.pdf.*
Form	Form 8915–A	Qualified 2016 Disaster Retirement Plan Distributions and Repayments.	*https://www.irs.gov/pub/irs-pdf/f8915a.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i8915a.pdf.*
Form	Form 8915–B	Qualified 2017 Disaster Retirement Plan Distributions and Repayments.	*https://www.irs.gov/pub/irs-pdf/f8915b.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i8915b.pdf.*
Form	Form 8915–C	Qualified 2018 Disaster Retirement Plan Distributions and Repayments.	*https://www.irs.gov/pub/irs-pdf/f8915c.pdf.*
Instruction		Instructions for Form 8915–C, Qualified 2018 Disaster Retirement Plan Distributions and Repayments.	*https://www.irs.gov/pub/irs-pdf/i8915c.pdf.*
Form	8915–D	Qualified 2019 Disaster Retirement Plan Distributions and Repayments.	*https://www.irs.gov/pub/irs-pdf/f8915d.pdf.*
Instruction		Instructions for 8915–D Qualified 2019 Disaster Retirement Plan Distributions and Repayments.	*https://www.irs.gov/pub/irs-pdf/i8915d.pdf.*
Form and Instruction.	Form 8917	Tuition and Fees Deduction	*https://www.irs.gov/pub/irs-pdf/f8917.pdf.*
Form and Instruction.	Form 8919	Uncollected Social Security and Medicare Tax on Wages.	*https://www.irs.gov/pub/irs-pdf/f8919.pdf.*
Form	Form 8925	Report of Employer-Owned Life Insurance Contracts.	*https://www.irs.gov/pub/irs-pdf/f8925.pdf.*
Form and Instruction.	Form 8932	Credit for Employer Differential Wage Payments.	*https://www.irs.gov/pub/irs-pdf/f8932.pdf.*
Form	Form 8933	Carbon Dioxide Sequestration Credit	*https://www.irs.gov/pub/irs-pdf/f8933.pdf.*
Form and Instruction.	Form 8936	Qualified Plug-In Electric Drive Motor Vehicle Credit.	*https://www.irs.gov/pub/irs-pdf/f8936.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i8936.pdf.*
Form	Form 8941	Credit for Small Employer Health Insurance Premiums.	*https://www.irs.gov/pub/irs-pdf/f8941.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i8941.pdf.*
Form	Form 8949	Sales and other Dispositions of Capital Assets.	*https://www.irs.gov/pub/irs-pdf/f8949.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i8949.pdf.*
Form	Form 8958	Allocation of Tax Amounts Between Certain Individuals in Community Property States.	*https://www.irs.gov/pub/irs-pdf/f8958.pdf.*
Form	Form 8962	Premium Tax Credit	*https://www.irs.gov/pub/irs-pdf/f8962.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i8962.pdf.*
Form	Form 8965	Health Coverage Exemptions	*https://www.irs.gov/pub/irs-pdf/f8965.pdf.*

INDIVIDUAL TAX FORMS—Continued

Type	Form No.	Form name	URL	Type	Form No.	Form name	URL
Form	Form 5713	International Boycott Report	*https://www.irs.gov/pub/irs-pdf/f5713.pdf.*	Instruction			*https://www.irs.gov/pub/irs-pdf/i8965.pdf.*
Form	Schedule A (Form 5713).	International Boycott Factor (Section 999(c)(1)).	*https://www.irs.gov/pub/irs-pdf/f5713sa.pdf.*	Form	8993	Section 250 Deduction for Foreign-Derived Intangible Income (FDII) and Global Intangible Low-Taxed Income (GILTI).	*https://www.irs.gov/pub/irs-pdf/f8993.pdf.*
Form	Schedule B (Form 5713).	Specifically Attributable Taxes and Income (Section 999(c)(2)).	https://www.irs.gov/pub/irs-pdf/f5713sb.pdf.	Instruction			*https://www.irs.gov/pub/irs-pdf/i8993.pdf.*
Form	Schedule C (Form 5713).	Tax Effect of the International Boycott Provisions.	*https://www.irs.gov/pub/irs-pdf/f5713sc.pdf.*	Form	Form 8994	Employer Credit for Paid Family and Medical Leave.	*https://www.irs.gov/pub/irs-pdf/f8994.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i5713.pdf.*	Instruction			*https://www.irs.gov/pub/irs-pdf/i8994.pdf.*
Form	Form 5884	Work Opportunity Cost	*https://www.irs.gov/pub/irs-pdf/f5884.pdf.*	Form	9000	Alternative Media Preference	Still under development at the time of release of this notice.
Instruction			*https://www.irs.gov/pub/irs-pdf/i5884.pdf.*	Form and Instruction.	Form 9465	Installment Agreement Request	*https://www.irs.gov/pub/irs-pdf/f9465.pdf.*
Form	Form 5884–A	Credits for Affected Disaster Area Employees.	*https://www.irs.gov/pub/irs-pdf/f5884a.pdf.*	Instruction			*https://www.irs.gov/pub/irs-pdf/i9465.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i5884a.pdf.*	Form and Instruction.	Form 9465 SP	Solicitud para un Plan de Pagos a Plazos	*https://www.irs.gov/pub/irs-pdf/f9465sp.pdf.*
Form	Form 6198	At-Risk Limitations	*https://www.irs.gov/pub/irs-pdf/f6198.pdf.*	Instruction			*https://www.irs.gov/pub/irs-pdf/i9465sp.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i6198.pdf.*	Form	Form T (Timber)	Forest Activities Schedules	*https://www.irs.gov/pub/irs-pdf/ft.pdf.*
Form	Form 6251	Alternative Minimum Tax-Individuals	*https://www.irs.gov/pub/irs-pdf/f6251.pdf.*	Instruction			*https://www.irs.gov/pub/irs-pdf/it.pdf.*
Instruction	Form 6251		*https://www.irs.gov/pub/irs-pdf/i6251.pdf.*	Form and Instruction.	Form W–4	Employee's Withholding Allowance Certificate.	*https://www.irs.gov/pub/irs-pdf/fw4.pdf.*
Form and Instruction.	Form 6252	Installment Sale Income	*https://www.irs.gov/pub/irs-pdf/f6252.pdf.*	2018 Form	Form W–4		*https://www.irs.gov/pub/irs-pdf/fw4_18.pdf.*
Form	Form 6478	Biofuel Producer Credit	*https://www.irs.gov/pub/irs-pdf/f6478.pdf.*	Form and Instruction.	Form W—4 P	Withholding Certificate for Pension or Annuity Payments.	*https://www.irs.gov/pub/irs-pdf/fw4p.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i6478.pdf.*	2018 Form			*https://www.irs.gov/pub/irs-pdf/fw4p_18.pdf.*
Form	Form 6765	Credit for Increasing Research Activities	*https://www.irs.gov/pub/irs-pdf/f6765.pdf.*	Form and Instruction.	Form W–4 S	Request for Federal Income Tax Withholding from Sick Pay.	*https://www.irs.gov/pub/irs-pdf/fw4s.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i6765.pdf.*	2018 Form			*https://www.irs.gov/pub/irs-pdf/fw4s_18.pdf.*
Form and Instruction.	Form 6781	Gains and Losses from Section 1256 Contracts and Straddles.	*https://www.irs.gov/pub/irs-pdf/f6781.pdf.*	Form and Instruction.	Form W–4 V	Voluntary Withholding Request	*https://www.irs.gov/pub/irs-pdf/fw4v.pdf.*
Form	Form 8082	Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).	*https://www.irs.gov/pub/irs-pdf/f8082.pdf.*	Form and Instruction.	Form W–4 (SP)	Certificado de Exencion de la Retencion del Empleado.	*https://www.irs.gov/pub/irs-pdf/fw4sp.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i8082.pdf.*	Form and Instruction.	Form W–7	Application for IRS Individual Taxpayer Identification Number.	*https://www.irs.gov/pub/irs-pdf/fw7.pdf.*
Form	Form 8275	Disclosure Statement	*https://www.irs.gov/pub/irs-pdf/f8275.pdf.*	Instruction			*https://www.irs.gov/pub/irs-pdf/iw7.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i8275.pdf.*	Form and Instruction.	Form W–7 A	Application for Taxpayer Identification Number for Pending U.S. Adoptions.	*https://www.irs.gov/pub/irs-pdf/fw7a.pdf.*
Form	Form 8275–R	Regulation Disclosure Statement	*https://www.irs.gov/pub/irs-pdf/f8275r.pdf.*	Form and Instruction.	Form W–7 (SP)	Solicitud de Numero de Indenticacion Personal del Contribuyente del Servico de Impuestos Internos.	*https://www.irs.gov/pub/irs-pdf/fw7sp.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i8275r.pdf.*	Instruction			*https://www.irs.gov/pub/irs-pdf/iw7sp.pdf.*
Form	Form 8283	Noncash Charitable Contributions	*https://www.irs.gov/pub/irs-pdf/f8283.pdf.*	Form	Form W–7 (COA)	Certificate of Accuracy for IRS Individual Taxpayer Identification Number.	*https://www.irs.gov/pub/irs-pdf/fw7coa.pdf.*
Instruction			*https://www.irs.gov/pub/irs-pdf/i8283.pdf.*	Other: Notice 2006–52.		*https://www.irs.gov/pub/irs-irbs/irb06-26.pdf.*.	
Form and Instruction.	Form 8332	Release of Claim to Exemption for Child of Divorced or Separated Parents.	*https://www.irs.gov/pub/irs-pdf/f8332.pdf.*	Other: Notice 2008–40.		*https://www.irs.gov/pub/irs-irbs/irb08-14.pdf.*.	
Form and Instruction.	Form 8379	Injured Spouse Claim and Allocation	*https://www.irs.gov/pub/irs-pdf/f8379.pdf.*	Other: Publication 972 Tables.		*https://www.irs.gov/pub/irs-pdf/p972.pdf.*.	
Instruction			*https://www.irs.gov/pub/irs-pdf/i8379.pdf.*	Other: TD 9408		*https://www.irs.gov/pub/irs-irbs/irb08-33.pdf.*.	
Form and Instruction.	Form 8396	Mortgage Interest Credit	*https://www.irs.gov/pub/irs-pdf/f8396.pdf.*				
Form and Instruction.	Form 8453	U.S. Individual Income Tax Declaration for an IRS e-file Return.	*https://www.irs.gov/pub/irs-pdf/f8453.pdf.*				

Document type	Form No.	Form name	URL	Document type	Form No.	Form name	URL
New Additions or updates to 1545–0074							
Form	Schedule LEP	Request for Alternative Language Products by Taxpayers with Limited English Proficiency (LEP).	Still under development at the time of release of this notice.	Form	9000	Alternative Media Preference	Still under development at the time of release of this notice.
Form	Schedule LEP (SP)	Schedule LEP Limited English Proficiency (SP).	Still under development at the time of release of this notice.	Rev. Proc.	2004–12	Section 35.—Health Insurance Costs of Eligible Individuals.	*https://www.irs.gov/pub/irs-irbs/irb04-09.pdf.*

Document type	Form No.	Form name	URL	Document type	Form No.	Form name	URL
Form	Schedule 1 (SP) (F. 1040).	Additional Income and Adjustments to Income in Spanish.	Still under development at the time of release of this notice.	Form	Schedule 8812(SP) (Form 1040).	Additional Tax Credit (Spanish version)	Still under development at the time of release of this notice.
Form	Schedule 2 (SP) (F. 1040).	Additional Taxes in Spanish	Still under development at the time of release of this notice.	Instruction	8812	Instructions for Schedule 8812 (Spanish version).	Still under development at the time of release of this notice.
Form	Schedule 3 (SP) (F. 1040).	Additional Credits and Payments in Spanish	Still under development at the time of release of this notice.	Instruction	Schedule 8812 (Form 1040).	Instructions for Schedule 8812	*https://www.irs.gov/pub/irs-pdf/i1040s8.pdf.*
Form	Schedule EIC (SP) (F. 1040).	Earned Income Credit (Spanish version)	Still under development at the time of release of this notice.	Instruction	8915–C	Instructions for Form 8915–C, Qualified 2018 Disaster Retirement Plan Distributions and Repayments.	*https://www.irs.gov/pub/irs-pdf/i8915c.pdf.*
Form	8915–D	Qualified 2019 Disaster Retirement Plan Distributions and Repayments.	*https://www.irs.gov/pub/irs-pdf/f8915d.pdf.*	Form	8993	Section 250 Deduction for Foreign-Derived Intangible Income (FDII) and Global Intangible Low-Taxed Income (GILTI).	*https://www.irs.gov/pub/irs-pdf/f8993.pdf.*
Instruction		Instructions for 8915–D Qualified 2019 Disaster Retirement Plan Distributions and Repayments.	*https://www.irs.gov/pub/irs-pdf/i8915d.pdf.*	Instruction			*https://www.irs.gov/pub/irs-pdf/i8993.pdf.*
TD	9902	Guidance Under Sections 951A and 954 Regarding Income Subject to a High Rate of Foreign Tax.	*https://www.govinfo.gov/content/pkg/FR-2020-07-23/pdf/2020-15351.pdf?utm_*medium=email&utm_campaign=subscription+mailing+list&A1utm_source=federalregister.gov.*	Form	8915–E	Qualified 2020 Disaster Retirement Plan Distributions and Repayments.	Still under development at the time of release of this notice.
TD	9920	Income Tax Withholding on Certain Periodic Retirement and Annuity Payments Under Section 3405(a).	*https://www.govinfo.gov/content/pkg/FR-2020-10-01/pdf/2020-21777.pdf.*				
TD	9924	Income Tax Withholding from Wages	*https://www.govinfo.gov/content/pkg/FR-2020-10-06/pdf/2020-22071.pdf.*				

[FR Doc. 2020–24139 Filed 10–29–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Web Automated Reference Material System

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice.

SUMMARY: VA announces that the Veteran Readiness and Employent Service Manual (M28R) was renamed M28C and was made available in an electronic public access through the KnowVA Knowledge Base.

DATES: These changes are effective October 1, 2020.

FOR FURTHER INFORMATION CONTACT: Kristine Kuehnle, Policy and Procedures Supervisor, Veteran Readiness and Employment Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 202–461–9749. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: The Web Automated Reference Manual System (WARMS), available at *http://www.benefits.va.gov/WARMS/,* provides public access to VA benefits policies and procedures issued in the form of manuals, directives and handbooks. Historically, M28R was electronically available to the public only in WARMS. WARMS displays M28R content in an individual portable document format, making it difficult to search for information or navigate from one document to another.

Effective October 1, 2020, M28R was renamed M28C and was made available in an electronic public access through the KnowVA Knowledge Base, available at *http://www.knowva.ebenefits.va.gov/.* The M28C content found on KnowVA is a mirror image of the M28C content available to VA employees through internal servers and is updated simultaneously when VA updates M28C content on the internal servers. Moreover, KnowVA is more user friendly than WARMS, with an intuitive search engine, keyword search capability and hyperlinked cross references to other M28C content, making it easier for users to locate information.

On October 1, 2020, VA made the M28C content available to the public. However, the M28R content will remain in WARMS for historical purposes until the M28R content is moved to the internal servers and the KnowVA Knowledge Base.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document 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. Brooks D. Tucker, Acting Chief of Staff, Department of Veterans Affairs, approved this document on October 27, 2020 for publication.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2020–24095 Filed 10–29–20; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 85 Friday,
No. 211 October 30, 2020

Part II

Environmental Protection Agency

40 CFR Parts 52, 78, and 97

Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52, 78, and 97

[EPA–HQ–OAR–2020–0272; FRL–10013–42–OAR]

RIN 2060–AU84

Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed action is taken in response to the United States Court of Appeals for the District of Columbia Circuit's (D.C. Circuit) remand of the Cross-State Air Pollution Rule (CSAPR) Update in *Wisconsin* v. *EPA* on September 13, 2019. The CSAPR Update finalized Federal Implementation Plans (FIPs) for 22 states to address their interstate pollution-transport obligations under the Clean Air Act (CAA) for the 2008 ozone National Ambient Air Quality Standards (NAAQS). The D.C. Circuit found that the CSAPR Update, which was published on October 26, 2016, as a partial remedy to address upwind states' obligations prior to the 2018 Moderate area attainment date under the 2008 ozone NAAQS, was unlawful to the extent it allowed those states to continue their significant contributions to downwind ozone problems beyond the statutory dates by which downwind states must demonstrate their attainment of the air quality standards. On the same grounds, the D.C. Circuit also vacated the CSAPR Close-Out in *New York* v. *EPA* on October 1, 2019. This proposed rule, if finalized, will resolve 21 states' outstanding interstate ozone transport obligations with respect to the 2008 ozone NAAQS. The U.S. Environmental Protection Agency (EPA) is taking this action under the Clean Air Act section known as the ''good neighbor provision.''

This action proposes to find that for 9 of the 21 states for which the CSAPR Update was found to be only a partial remedy (Alabama, Arkansas, Iowa, Kansas, Mississippi, Missouri, Oklahoma, Texas, and Wisconsin), their projected nitrogen oxides (NO_X) emissions in the 2021 ozone season and thereafter do not significantly contribute to a continuing downwind nonattainment and/or maintenance problem, and therefore the states' CSAPR Update FIPs (or the SIPs subsequently approved to replace certain states' CSAPR Update FIPs) fully address their interstate ozone transport obligations with respect to the 2008 ozone NAAQS. This action also proposes to find that for the 12 remaining states (Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia), their projected 2021 ozone season NO_X emissions significantly contribute to downwind states' nonattainment and/or maintenance problems for the 2008 ozone NAAQS. EPA proposes to issue new or amended FIPs for these 12 states to replace their existing CSAPR NO_X Ozone Season Group 2 emissions budgets for electricity generating units (EGUs) with revised budgets via a new CSAPR NO_X Ozone Season Group 3 Trading Program. EPA is proposing to require implementation of the revised emission budgets beginning with the 2021 ozone season (which runs annually from May 1–September 30). Based on EPA's assessment of remaining air quality issues and additional emission control strategies for EGUs and other emissions sources in other industry sectors (non-EGUs), EPA further proposes that the proposed NO_X emission reductions fully eliminate these states' significant contributions to downwind air quality problems for the 2008 ozone NAAQS. EPA also proposes in this action an error correction for its June 2018 approval of Kentucky's good neighbor SIP.

DATES: Comments must be received on or before December 14, 2020.

Public Hearing: EPA will hold a virtual public hearing on November 12, 2020. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2020–0272, via the Federal eRulemaking Portal: *https://www.regulations.gov/*. Follow 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. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov/* or email, as there may be a delay in processing mail and faxes. 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*.

Throughout this proposal, EPA is soliciting comment on numerous aspects of the proposed rule. EPA has indexed each comment solicitation with an alpha-numeric identifier (*e.g.,* ''C–1'', ''C–2'', ''C–3'', . . .). Accordingly, we ask that commenters include the corresponding identifier when providing comments relevant to that comment solicitation. We ask that commenters include the identifier in either a heading, or within the text of each comment (*e.g.,* ''In response to solicitation of comment C–1, . . .'') to make clear which comment solicitation is being addressed. We emphasize that we are not limiting comment to these identified areas and welcome comments on any matters that are within scope of this action.

EPA will announce further details on the virtual public hearing, as well as registration information, at *https://www.epa.gov/csapr/revised-cross-state-air-pollution-update*. Refer to the **SUPPLEMENTARY INFORMATION** section below for additional information.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Hooper, Clean Air Markets Division, Office of Atmospheric Programs (Mail Code 6204M), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 343–9167; email address: *Hooper.Daniel@epa.gov*.

SUPPLEMENTARY INFORMATION:

Preamble Glossary of Terms and Abbreviations

The following are abbreviations of terms used in the preamble.

4-Step Good Neighbor Framework 4-Step Framework
AEO Annual Energy Outlook
AQAT Air Quality Assessment Tool
AQM TSD Air Quality Modeling Technical Support Document
CAA or Act Clean Air Act
CAIR Clean Air Interstate Rule
CAMx Comprehensive Air Quality Model with Extensions
CBI Confidential Business Information
CEMS Continuous Emission Monitoring Systems
CFR Code of Federal Regulations
CMDb Control Measures Database

CMV Commercial Marine Vehicle
CoST Control Strategy Tool
CRA Congressional Review Act
CSAPR Cross-State Air Pollution Rule
EGU Electric Generating Unit
EISA Energy Independence and Security Act
EPA U.S. Environmental Protection Agency
FIP Federal Implementation Plan
FR Federal Register
GWh Gigawatt-hour
IC Internal Combustion
ICI Industrial, Commercial, and Institutional
ICR Information Collection Request
IPM Integrated Planning Model
iSIP Infrastructure State Implementation Plan
km Kilometer
lb/mmBtu Pounds per Million British Thermal Units
LEC Low Emission Combustion
LNB Low-NO_X Burners
MJO Multi-Jurisdictional Organizations
mmBtu Million British Thermal Units
MOVES Motor Vehicle Emission Simulator
MSAT2 Mobile Source Air Toxic Rule
NAAQS National Ambient Air Quality Standard
NEI National Emission Inventory
NESHAP National Emission Standards for Hazardous Air Pollutants
NO_X Nitrogen Oxides
NODA Notice of Data Availability
Non-EGU Non-electric Generating Unit
NSPS New Source Performance Standard
NUSA New Unit Set-Aside
OSAT/APCA Ozone Source Apportionment Technology/Anthropogenic Precursor Culpability Analysis
OMB Office of Management and Budget
OTR Ozone Transport Region
PEMS Predictive Emissions Monitoring System
$PM_{2.5}$ Fine Particulate Matter
ppb Parts Per Billion
RACT Reasonably Available Control Technology
RIA Regulatory Impact Analysis
RICE Reciprocating Internal Combustion Engines
RRF Relative Response Factor
SCR Selective Catalytic Reduction
SIP State Implementation Plan
SMOKE Sparse Matrix Operator Kernel Emissions
SNCR Selective Non-catalytic Reduction
SO_2 Sulfur Dioxide
TIP Tribal Implementation Plan
TSD Technical Support Document
tpy Ton Per Year
ULNB Ultra-low NO_X Burner
VOC Volatile Organic Compound
WRF Weather Research and Forecasting Model

Table of Contents

I. Executive Summary

The 2008 ozone National Ambient Air Quality Standards (NAAQS) is an 8-hour standard that was set at 75 parts

per billion (ppb).[1] The U.S. Environmental Protection Agency (EPA) published the Cross-State Air Pollution Rule (CSAPR) Update on October 26, 2016, which partially addressed the interstate transport of emissions from 21 states with respect to the 2008 ozone NAAQS.[2] 81 FR 74504. On December 21, 2018, EPA published the CSAPR Close-Out, which found that the CSAPR Update was a complete remedy based on air quality analysis of the year 2023.[3]

On September 13, 2019, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded the CSAPR Update, concluding that it was invalid in one respect because it unlawfully allowed upwind states to continue their significant contributions to downwind air quality problems beyond the statutory dates by which downwind States must demonstrate their attainment of ozone air quality standards. *Wisconsin* v. *EPA,* 938 F.3d 303, 318–20 (D.C. Cir. 2019) (*Wisconsin*) (per curiam); *see also id.* 336–37 (concluding that remand without vacatur was appropriate). Subsequently, on October 1, 2019, in a judgment order, the D.C. Circuit vacated the CSAPR Close-Out on the same grounds on which it had remanded without vacatur the CSAPR Update in *Wisconsin. New York* v. *EPA,* 781 Fed. App'x 4, 7 (D.C. Cir. 2019) (*New York*). The court found the CSAPR Close-Out inconsistent with the *Wisconsin* holding because the rule analyzed the year 2023 rather than 2021 (''the next applicable attainment date'') and failed to demonstrate that it was an impossibility to address significant contribution by the 2021 attainment date.

In this proposal to revise the CSAPR Update on remand, in compliance with *Wisconsin* and *New York,* EPA has aligned its analysis and the implementation of emission reductions required to address significant contribution with the 2021 ozone season, which corresponds to the July 20, 2021, Serious area attainment date for the 2008 ozone NAAQS. EPA has further determined which emission reductions are impossible to achieve by the 2021 attainment date and whether any such additional emission reductions should be required beyond that date, *see Wisconsin,* 938 F.3d at 320; *New York,* 781 Fed. App'x at 7.

Unless explicitly raised in this proposal, EPA is not reopening any determinations, findings, or statutory or regulatory interpretations that are not required to address the *Wisconsin* remand. This proposed action addressing the remand of the CSAPR Update in *Wisconsin* will also have the effect of addressing the outstanding obligations that resulted from the D.C. Circuit's vacatur of the CSAPR Close-Out in *New York. See New York,* 781 Fed. App'x at 7.

A. Purpose of the Regulatory Action

The purpose of this rulemaking is to protect public health and welfare by reducing interstate transport of certain emissions that significantly contribute to nonattainment, or interfere with maintenance, of the 2008 ozone NAAQS in the U.S. Ground-level ozone causes a variety of negative effects on human health, vegetation, and ecosystems. In humans, acute and chronic exposure to ozone is associated with premature mortality and a number of morbidity effects, such as asthma exacerbation. Ozone exposure can also negatively impact ecosystems, for example, by limiting tree growth. Studies have established that ozone transport occurs on a regional scale (*i.e.,* hundreds of miles) over much of the eastern U.S., with elevated concentrations occurring in rural as well as metropolitan areas.[4] [5] As discussed in more detail in Section V.A.1, assessments of ozone control approaches have concluded that nitrogen oxides (NO_X) control strategies are effective to reduce regional-scale ozone transport.[6]

Clean Air Act (CAA or the Act) section 110(a)(2)(D)(i)(I), which is also known as the ''good neighbor provision,'' requires states to prohibit emissions that will contribute significantly to nonattainment or interfere with maintenance in any other state with respect to any primary or secondary NAAQS.[7] The statute vests states with the primary responsibility to address interstate emission transport through the development of good neighbor State Implementation Plans (SIPs), which are one component of larger SIP submittals typically required three years after EPA promulgates a new or revised NAAQS. These larger SIPs are often referred to as ''infrastructure'' SIPs or iSIPs. *See* CAA section 110(a)(1) and (2). EPA supports state efforts to submit good neighbor SIPs for the 2008 ozone NAAQS and has shared information with states to facilitate such SIP submittals. However, the CAA also requires EPA to fill a backstop role by issuing Federal Implementation Plans (FIPs) where states fail to submit good neighbor SIPs or EPA disapproves a submitted good neighbor SIP. *See generally* CAA section 110(k) and 110(c).

On October 26, 2016, EPA published the CSAPR Update, which finalized FIPs for 22 states that EPA found failed to submit a complete good neighbor SIP (15 states) [8] or for which EPA issued a final rule disapproving their good neighbor SIP (7 states).[9] The FIPs promulgated for these states included new electric generating units (EGUs) NO_X ozone season emission budgets to reduce interstate transport for the 2008 ozone NAAQS. These emission budgets took effect in 2017 in order to assist downwind states with attainment of the 2008 ozone NAAQS by the 2018 Moderate area attainment date. EPA acknowledged at the time that the FIPs promulgated for 21 of the 22 states only partially addressed good neighbor obligations under the 2008 ozone NAAQS.[10] The 22 states for which EPA promulgated FIPs to reduce interstate ozone transport as to the 2008 ozone NAAQS are listed in Table I.A–1.

TABLE I.A—1 LIST OF 22 COVERED STATES FOR THE 2008 8-HOUR OZONE NAAQS IN THE CSAPR UPDATE

State
Alabama
Arkansas
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maryland
Michigan
Mississippi
Missouri
New Jersey

[1] 73 FR 16436 (March 27, 2008).

[2] In the CSAPR Update, EPA found that the finalized Tennessee emission budget fully addressed Tennessee's good neighbor obligation with respect to the 2008 ozone NAAQS. 81 FR 74504, 74508 n. 19 (Oct. 26, 2016).

[3] 83 FR 65878 (Dec. 21, 2018).

[4] Bergin, M.S. et al. (2007) Regional air quality: Local and interstate impacts of NO_X and SO_2 emissions on ozone and fine particulate matter in the eastern United States. Environmental Sci & Tech. 41: 4677–4689.

[5] Liao, K. et al. (2013) Impacts of interstate transport of pollutants on high ozone events over the Mid-Atlantic United States. Atmospheric Environment 84, 100–112.

[6] *See also* 82 FR 51238, 51248 (Nov. 3, 2017) (citing 76 FR 48208, 48222 (Aug. 8, 2011)) and 63 FR 57381 (Oct. 27, 1998).

[7] 42 U.S.C. 7410(a)(2)(D)(i)(I).

[8] Alabama, Arkansas, Illinois, Iowa, Kansas, Maryland, Michigan, Mississippi, Missouri, New Jersey, Oklahoma, Pennsylvania, Tennessee, Virginia, and West Virginia.

[9] Indiana, Kentucky, Louisiana, New York, Ohio, Texas, and Wisconsin.

[10] In the CSAPR Update, EPA found that the finalized Tennessee emission budget fully addressed Tennessee's good neighbor obligation with respect to the 2008 ozone NAAQS.

TABLE I.A—1 LIST OF 22 COVERED STATES FOR THE 2008 8-HOUR OZONE NAAQS IN THE CSAPR UPDATE

State
New York
Ohio
Oklahoma
Pennsylvania
Tennessee
Texas
Virginia
West Virginia
Wisconsin

In response to the D.C. Circuit's remand of the CSAPR Update in *Wisconsin* v. *EPA* and the court's vacatur of the CSAPR Close-Out in *New York* v. *EPA,* this rule proposes to find that 12 of the 22 states listed in Table I.A–1 require further ozone season NO_X emission reductions to address the good neighbor provision as to the 2008 ozone NAAQS. As such, EPA proposes to promulgate new or revised FIPs for these states that include new EGU NO_X ozone season emission budgets, with implementation of these emission budgets beginning with the 2021 ozone season.[11] The 12 states for which EPA is proposing to promulgate new or revised FIPs to reduce interstate ozone transport as to the 2008 ozone NAAQS in this rulemaking are listed in Table I.A–2.

TABLE I.A—2 PROPOSED LIST OF 12 COVERED STATES FOR THE 2008 8-HOUR OZONE NAAQS

State
Illinois
Indiana
Kentucky
Louisiana
Maryland
Michigan
New Jersey
New York
Ohio
Pennsylvania
Virginia
West Virginia

EPA also proposes to adjust these states' emission budgets for each ozone season thereafter to incentivize ongoing operation of identified emission controls to address significant contribution, until such time that our air quality projections demonstrate resolution of the downwind nonattainment and/or maintenance problems for the 2008 ozone NAAQS. No further budget adjustments would be made after that time (*i.e.,* after the 2024 ozone season in EPA's proposed analysis). EPA proposes to implement the new state-level ozone season emission budgets through a new CSAPR NO_X Ozone Season Group 3 Trading Program. Based on EPA's assessment of remaining air quality issues and additional emission control strategies, EPA further proposes to find that these NO_X emission reductions fully eliminate these states' significant contributions to downwind air quality problems for the 2008 ozone NAAQS.

As discussed in more detail in Section V.C.2.b below, for one state, Kentucky, EPA is proposing to make an error correction under CAA section 110(k)(6) of its June 2018 approval of that state's SIP, which had concluded that the CSAPR Update was a complete remedy based on modeling of the 2023 analytic year. EPA proposes to determine that the basis for that conclusion has been invalidated by the decisions in *Wisconsin* and *New York,* and that Kentucky's good neighbor obligations are outstanding. In light of the *Wisconsin* remand of Kentucky's FIP and our proposed error correction, EPA has the necessary authority to amend the CSAPR Update FIP for Kentucky.

For the nine remaining states with FIPs promulgated under the CSAPR Update that EPA previously found partially addressed good neighbor obligations for the 2008 ozone NAAQS (Alabama, Arkansas, Iowa, Kansas, Mississippi, Missouri, Oklahoma, Texas, and Wisconsin), EPA's updated air quality and contributions analysis shows that these states are not linked to any downwind air quality problems in 2021.[12] Therefore, EPA proposes to find that the existing CSAPR Update FIPs (or the SIP revisions later approved to replace the CSAPR Update FIPs) for these states satisfy their good neighbor obligations for the 2008 ozone NAAQS.[13] Consequently, EPA is not proposing to require additional emission reductions from sources in these states in this proposed rulemaking.

B. Summary of the Major Provisions of the Regulatory Action

To reduce interstate ozone transport under the authority provided in CAA section 110(a)(2)(D)(i)(I), this rule proposes to further limit ozone season (May 1 through September 30) NO_X emissions from EGUs in 12 states using the same framework used by EPA in developing the CSAPR and other good neighbor rules (the 4-step good neighbor framework or 4-step framework). The 4-step good neighbor framework provides a process to address the requirements of the good neighbor provision for ground-level ozone NAAQS: (1) Identifying downwind receptors that are expected to have problems attaining or maintaining the NAAQS; (2) determining which upwind states contribute to these identified problems in amounts sufficient to ''link'' them to the downwind air quality problems (*i.e.,* here, a 1 percent contribution threshold); (3) for states linked to downwind air quality problems, identifying upwind emissions that significantly contribute to downwind nonattainment or interfere with downwind maintenance of the NAAQS; and (4) for states that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind, implementing the necessary emissions reductions through enforceable measures. In this proposed rule, EPA applies this 4-step framework to respond to the D.C. Circuit's remand and to revise the CSAPR Update with respect to the 2008 ozone NAAQS.

In order to apply the first step of the 4-step framework to the 2008 ozone NAAQS, EPA performed air quality modeling coupled with ambient measurements in an interpolation technique to project ozone concentrations at air quality monitoring sites in 2021.[14] EPA evaluated 2021 projected ozone concentrations at individual monitoring sites and considered current ozone monitoring data at these sites to identify receptors that are anticipated to have problems attaining or maintaining the 2008 ozone NAAQS.

[11] As discussed in section V.C.2.c., in 2018 EPA approved a SIP revision for Indiana replacing the state's CSAPR Update FIP with equivalent state regulations. This SIP revision, like the CSAPR Update FIP it replaced, was partial in nature. EPA is therefore proposing in this action to issue a new FIP rather than a revised FIP for Indiana.

[12] EPA's use of a contribution threshold to determine, without further analysis of potential emissions reduction opportunities, that certain states have no remaining good neighbor obligations with respect to a given NAAQS is part of the analytic approach that was followed in the CSAPR rulemaking and upheld by the Supreme Court. *See EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489, 521–22 (2014).

[13] As discussed in section V.C.2.c., in 2017 and 2019 EPA approved SIP revisions for Alabama and Missouri replacing the states' CSAPR Update FIPs with equivalent state regulations. These SIP revisions, like the CSAPR Update FIPs they replaced, were partial in nature. EPA is therefore proposing to determine in this action that the states' existing SIP provisions satisfy these states' good neighbor obligations for the 2008 ozone NAAQS.

[14] The next relevant attainment date for the 2008 ozone NAAQS is July 20, 2021, for Serious nonattainment areas. 80 FR 12264, 12268; 40 CFR 51.1103.

To apply the second step of the framework, EPA used air quality modeling and an interpolation technique to quantify the contributions from upwind states to ozone concentrations in 2021 at downwind receptors. Once quantified, EPA then evaluated these contributions relative to a screening threshold of 1 percent of the NAAQS (*i.e.,* 0.75 ppb). States with contributions that equal or exceed 1 percent of the NAAQS were identified as warranting further analysis for significant contribution to nonattainment or interference with maintenance. States with contributions below 1 percent of the NAAQS were considered to not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in downwind states. Based on EPA's updated air quality and contribution analysis using 2021 as the analytic year, EPA proposes that the following 12 states have contributions that equal or exceed 1 percent of the 2008 ozone NAAQS, and thereby warrant further analysis for significant contribution to nonattainment or interference with maintenance: Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia.

At the third step of the 4-step framework, EPA applied the multi-factor test used in the CSAPR Update, which evaluates cost, available emission reductions, and downwind air quality impacts to determine the amount of linked upwind states' emissions that ''significantly'' contribute to downwind nonattainment or maintenance receptors. In this action, EPA applies the multifactor test to both EGU and non-EGU source categories and assesses potential emission reductions in all years for which there is a potential remaining interstate ozone transport problem (*i.e.,* through 2025), in order to ensure a full remedy in compliance with the *Wisconsin* decision.

EPA identified a control strategy that reflects the optimization of existing selective catalytic reduction (SCR) controls and installation of state-of-the-art NO_X combustion controls at EGUs, with an estimated marginal cost of $1,600 per ton. It is at this control stringency where incremental EGU NO_X reduction potential and corresponding downwind ozone air quality improvements are maximized. That is, the ratio of emission reductions to marginal cost and the ratio of ozone improvements to marginal cost are maximized relative to the other control stringency levels evaluated. EPA finds that these very cost-effective EGU NO_X reductions will make meaningful and timely improvements in downwind ozone air quality to address interstate ozone transport for the 2008 ozone NAAQS, as discussed in section VII.D.1 below. Further, this evaluation shows that emission budgets reflecting the $1,600 per ton cost threshold do not over-control upwind states' emissions relative to either the downwind air quality problems to which they are linked at step 1 or the 1 percent contribution threshold that triggers further evaluation at step 2 of the 4-step framework.

EPA notes that these proposed EGU control strategies (optimization of existing SCR controls and installation of state-of-the-art NO_X combustion controls) were the same strategies selected in the CSAPR Update for the 2017 ozone season, and which at that time EPA characterized as only a partial remedy. For this rule, EPA extends its evaluation of the reduction potential from these control strategies to years beyond 2017 in order to assess a full remedy. EPA's updated analysis, as discussed in more detail in Section VII, leads the Agency to propose that these control strategies can provide additional cost-effective emission reductions for the 2021 through 2024 ozone seasons. While EPA's analysis indicates that the majority of EGUs implemented these control strategies in response to the CSAPR Update, changes in the power sector since the 2017 ozone season and updated air quality and contribution analysis show that there is a demonstrated need to update the emission budgets for these 12 states to fully eliminate significant contribution.

For non-EGU industry sectors and emissions sources, EPA applied the step 3 multi-factor test to determine whether any emissions reductions should be required from non-EGU sources to address significant contribution under the 2008 ozone NAAQS. EPA acknowledges that its current datasets with information on emissions, existing controls on emissions sources, emission-reduction potential, and air quality impacts for these sources are relatively incomplete and uncertain compared to the datasets it has for EGUs. Nonetheless, using the best information currently available to the Agency, the proposed analysis suggests that there are relatively fewer emissions reductions available at a cost threshold comparable to the cost threshold selected for EGUs. Such reductions are estimated to have a relatively small effect on any downwind receptor in the year by which such controls could likely be installed. For these reasons, EPA proposes that limits on ozone season NO_X emissions from non-EGU sources are not required to eliminate ''significant'' contribution under the 2008 ozone NAAQS (see section VII.D.2).

To improve the underlying data and assessment of emission reduction potential from non-EGU sources for this and future regulatory efforts, EPA is soliciting comment on the assessment of emission reduction potential from the glass and cement manufacturing sectors discussed in Sections VII.B.2, VII.C.2, and VII.D.2. In addition, EPA summarizes the available information on all potential control measures for non-EGU emissions sources or units with 150 tons per year or more of pre-control NO_X emissions in several industry sectors for the 12 states in Table I.A–2. This information illustrates that there are many potential approaches to assessing emissions reductions from non-EGU emissions sources or units. EPA is soliciting comment on the completeness and accuracy of this additional information on potential control measures for non-EGU emissions sources or units in several industry sectors. Specifically, EPA summarized information on the application, costs, and installation timing of ultra-low NO_X burners on industrial, commercial, and institutional (ICI) boilers and low emission combustion on reciprocating internal combustion (IC) engines.

Based on EPA's analysis at step 3, the Agency proposes EGU NO_X ozone season emission budgets developed using uniform control stringency represented by $1,600 per ton. EPA proposes to determine that with implementation of this control strategy, the 12 states in Table I.A–2 will have fully addressed significant contribution under the good neighbor provision for the 2008 ozone NAAQS. EPA is proposing to align implementation of emission budgets with relevant attainment dates for the 2008 ozone NAAQS, as required by the D.C. Circuit's decision in *Wisconsin* v. *EPA*.[15] As EPA's final 2008 Ozone NAAQS SIP Requirements Rule[16] established the attainment deadline of July 20, 2021, for ozone nonattainment

[15] 938 F.3d 303, 320 (D.C. Cir. 2019) (holding that EPA must align interstate transport compliance deadlines with downwind attainment deadlines unless EPA can demonstrate an impossibility or other necessity).

[16] 80 FR 12264, 12268; 40 CFR 51.1103.

areas currently designated as Serious, EPA proposes to establish emission budgets and implementation of these emission budgets starting with the 2021 ozone season as shown in Table I.B–1.

TABLE I.B—1 PROPOSED EGU NO_X OZONE SEASON EMISSION BUDGETS EMISSIONS

[Ozone season NO_X tons] *

State	2021 Budget	2022 Budget	2023 Budget	2024 Budget
Illinois	9,444	9,415	8,397	8,397
Indiana	12,500	11,998	11,998	9,447
Kentucky	14,384	11,936	11,936	11,936
Louisiana	15,402	14,871	14,871	14,871
Maryland	1,522	1,498	1,498	1,498
Michigan	12,727	11,767	9,803	9,614
New Jersey	1,253	1,253	1,253	1,253
New York	3,137	3,137	3,137	3,119
Ohio	9,605	9,676	9,676	9,676
Pennsylvania	8,076	8,076	8,076	8,076
Virginia	4,544	3,656	3,656	3,395
West Virginia	13,686	12,813	11,810	11,810
Total	106,280	100,096	96,111	93,092

* **Note**—the 2022 and beyond budgets incorporate the installation of state-of-the-art NO_X combustion controls; whereas the 2021 budgets do not. Additionally, the 2024 emissions budget applies to 2024 and each year thereafter.

As noted in Section I, EPA further determined which emission reductions are impossible to achieve by the 2021 attainment date—and whether any such additional emission reductions should be required beyond that date.[17] *See Wisconsin,* 938 F.3d at 320. EPA estimates that one part of the selected control strategy—installation of state-of-the-art NO_X combustion controls—can occur between approximately one to six months at any particular unit. As the final rule will likely become effective either immediately prior to or slightly after the start of the 2021 ozone season, EPA determined it is not possible to install state-of-the-art NO_X combustion controls on a regional scale by the beginning of the 2021 ozone season.[18] EPA proposes to conclude that an emission reduction strategy is impossible if it cannot be implemented statewide by the relevant attainment date because statewide budgets are based on fleetwide averages. Therefore, the proposed 2021 ozone season emission budgets reflect only the control strategy of optimizing existing SCR controls at the affected EGUs, but the proposed emission budgets for the 2022 ozone season and beyond reflect both the continued optimization of existing SCR controls and installation of state-of-the-art NO_X combustion controls. Detailed installation-timing information for this technology is available in Section VII.B and the EGU NO_X Mitigation Strategies TSD.

As discussed in section VII.D.1, EPA's air quality projections anticipate that with the implementation of the identified control stringency for EGUs represented by $1,600 per ton, downwind nonattainment and maintenance problems for the 2008 ozone NAAQS will persist through the 2024 ozone season. Therefore, EPA is proposing to adjust emission budgets for upwind states that remain linked to downwind nonattainment and maintenance problems through the 2024 ozone season to incentivize the continued optimization of existing SCR controls and installation of state-of-the-art NO_X combustion controls. The 2024 emission budgets would then continue to apply in each year thereafter.

As discussed below, EPA notes that emissions budgets are implemented through the market-based mechanism of a trading program for emission allowances. Under such a trading program, sources have the compliance flexibility to make emissions reductions themselves or to purchase allowances from other sources (either directly from those sources or indirectly through a third party) that do not need those allowances to cover their remaining emissions. Given this compliance flexibility, EPA is taking comment on whether delaying the incorporation of emission reduction potential from the installation of state-of-the-art NO_X combustion controls into state emission budgets until 2022 is necessary (Comment C–1).

To apply the fourth step of the 4-step framework (*i.e.,* implementation), EPA proposes to include enforceable measures in the promulgated FIPs to achieve the required emission reductions in each of the 12 states. Specifically, the FIPs would require power plants in the 12 states to participate in a new CSAPR NO_X Ozone Season Group 3 Trading Program that largely replicates the existing CSAPR NO_X Ozone Season Group 2 Trading Program; with the main differences being the geography and budget stringency. Aside from the removal of the 12 covered states from the current CSAPR NO_X Ozone Season Group 2 Trading Program, this proposal leaves unchanged the budget stringency and geography of the existing CSAPR NO_X Ozone Season Group 1 and Group 2 trading programs.

For this rulemaking, EPA is proposing to authorize a one-time conversion of allowances banked in 2017–2020 under the CSAPR Update NO_X Ozone Season Group 2 Trading Program into a limited number of allowances that can be used for compliance in the CSAPR NO_X Ozone Season Group 3 Trading Program. Similar to the approach taken in the CSAPR Update, EPA is proposing to base the conversion on a formula that ensures emissions in the CSAPR NO_X Ozone Season Group 3 Trading Program region do not exceed a specified level (defined as emissions up to the sum of

[17] As described in detail in Sections VII.B and VII.C, some mitigation efforts that require the installation of significant new plant hardware (*e.g.,* combustion control upgrade, selective catalytic reduction, and non-selective catalytic reduction) are not possible by the start of the 2021 ozone season. However, EPA proposes some of these measures (*i.e.,* combustion controls) be factored into its quantification of significant contribution starting at the later date of the start of the 2022 ozone season.

[18] On July 28, 2020, the U.S. District Court for the Southern District of New York issued a decision establishing a deadline of March 15, 2021, for EPA to issue a final rule fully resolving good neighbor obligations under the 2008 ozone NAAQS for seven upwind states. *New Jersey* v. *Wheeler,* No. 1:20–cv–01425 (S.D.N.Y. July 28, 2020).

the states' ozone season emissions budgets and variability limits) as a result of the use of banked allowances from the Group 2 trading program. EPA also proposes to provide a process through which holders of Group 2 allowances in non-facility accounts (''general'' accountholders) could designate any Group 2 allowances that they do not wish to have converted to Group 3 allowances.

The remainder of this preamble is organized as follows: Section IV describes EPA's legal authority for this proposed action; section V describes the human health and environmental context, as well as EPA's proposed approach for addressing interstate transport for the 2008 ozone NAAQS; section VI describes its assessment of downwind receptors of concern and upwind state ozone contributions to those receptors, including the air quality modeling platform and emission inventories that EPA used; section VII describes EPA's approach to quantify upwind state obligations in the form of final EGU NO_X emission budgets; section VIII details the implementation requirements including key elements of the CSAPR trading program and deadlines for compliance; section IX describes the expected costs, benefits, and other impacts of this proposed rule; section X discusses changes to the existing regulatory text; and section XI discusses the statutes and executive orders affecting this proposed rulemaking.

C. Costs and Benefits

A summary of the key results of the cost-benefit analysis that was prepared for this proposed rule is presented in Table I.C–1. Table I.C–1 presents estimates of the present values (PV) and equivalent annualized values (EAV), calculated using discount rates of 3 and 7 percent as directed by OMB's Circular A–4, of the compliance costs, climate benefits, and net benefits of the proposed rule, in 2016 dollars, discounted to 2021. The estimated net benefits are the estimated benefits minus the estimated costs of the proposed rule. The table represents the present value of non-monetized benefits from ozone, $PM_{2.5}$ and NO_2 reductions as a β, while b represents the equivalent annualized value of these non-monetized benefits. These values will differ across the discount rates and depend on the B's in Tables IX.4 and IX.5 presented in Section IX.

TABLE I.C—1 ESTIMATED COMPLIANCE COSTS, CLIMATE BENFITS AND NET BENEFITS OF THE PROPOSED RULE, 2021 THROUGH 2025

[Millions 2016$, discounted to 2021]

	3% Discount rate	7% Discount rate
Present Value:		
Benefits[c d]	101+β	15+β
Climate Benefits[c]	101	15
Compliance Costs[e]	87	83
Net Benefits	14+β	−68+β
Equivalent Annualized Value:		
Benefits	22+b	4+b
Climate Benefits	22	4
Compliance Costs	19	20
Net Benefits	3+b	−17+b

[a] All estimates in this table are rounded to two significant figures, so numbers may not sum due to independent rounding.

[b] The annualized present value of costs and benefits are calculated over a 5 year period from 2021 to 2025.

[c] Benefits ranges represent discounting of climate benefits at a real discount rate of 3 percent and 7 percent. Climate benefits are based on changes (reductions) in CO_2 emissions.

[d] β and b is the sum of all unquantified ozone, $PM_{2.5}$, and NO_2 benefits. The annual values of β and b will differ across discount rates. While EPA did not estimate these benefits in the RIA, Appendix 5B in the RIA presents $PM_{2.5}$ and ozone estimates quantified using methods consistent with the previously published ISAs[19 20] to provide information regarding the potential magnitude of the benefits of this proposed rule.

[e] The costs presented in this table reflect annualized present value compliance costs calculated over a 5 year period from 2021 to 2025.

Table 1.C–1 does not include quantified and monetized health benefits associated with reduced exposures to concentrations of ground-level ozone and fine particulates. The Agency intends to update its approach for quantifying the benefits of air quality changes by considering the evidence reported in recently completed Integrated Science Assessments for ground-level ozone and fine particulates and accounting for forthcoming recommendations from the Science Advisory Board on this issue. This process is still underway and will not be completed in time for this proposed rule. See Section IX of this preamble for more discussion. However, to provide perspective regarding the scope of the estimated benefits, Appendix 5B of the RIA illustrates the potential health effects associated with the changes in $PM_{2.5}$ and ozone concentrations as calculated using methods developed prior to the 2019 p.m. ISA and 2020 Ozone ISA. That analysis provides perspective regarding the scope of the estimated benefits. EPA is in the process of recalibrating its benefits estimates for all PM and ozone health endpoints. EPA intends to update its quantitative methods for estimating the number and economic value of $PM_{2.5}$ and ozone health effects in time for publication as part of the final rule.

As shown in Table I.C–1, the PV of the climate benefits of this proposed rule, discounted at a 7-percent rate, is estimated to be about $15 million, with an EAV of about $4 million. At a 3-percent discount rate, the PV of the climate benefits is estimated to be about $101 million, with an EAV of $22 million. The PV of the compliance costs, discounted at a 7-percent rate, is estimated to be about $83 million, with an EAV of about $20 million. At a 3-percent discount rate, the PV of the compliance costs is estimated to be about $87 million, with an EAV of about

[19] U.S. Environmental Protection Agency (U.S. EPA). 2009. Integrated Science Assessment for Particulate Matter (Final Report). EPA–600–R–08–139F. National Center for Environmental Assessment—RTP Division, Research Triangle Park, NC. December. Available at: *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=216546*>.

[20] U.S. Environmental Protection Agency (U.S. EPA). 2013. Integrated Science Assessment of Ozone and Related Photochemical Oxidants (Final Report). EPA/600/R–10/076F. National Center for Environmental Assessment—RTP Division, Research Triangle Park. Available at: *http://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=247492#Download*>.

$19 million. The PV of the net benefits of this proposed rule, discounted at a 7-percent rate, is estimated to be about −$68 million, with an EAV of about −$17 million. At a 3-percent discount rate, the PV of the net benefits is estimated to be about $14 million, with an EAV of about $3 million .

II. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2020–0272, at *https://www.regulations.gov*. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*.

EPA is temporarily suspending its Docket Center and Reading Room for public visitors to reduce the risk of transmitting COVID–19. Written comments submitted by mail are temporarily suspended and no hand deliveries will be accepted. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov*. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets*.

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.

B. Participation in Virtual Public Hearing

Please note that EPA is deviating from its typical approach because the President has declared a national emergency. Because of current CDC recommendations, as well as state and local orders for social distancing to limit the spread of COVID–19, EPA cannot hold in-person public meetings at this time.

EPA will begin pre-registering speakers for the hearing upon publication of this document in the **Federal Register**. To register to speak at the virtual hearing, please use the online registration form available at *https://www.epa.gov/csapr/revised-cross-state-air-pollution-update* or contact Ms. Kimberly Liu at *liu.kimberly@epa.gov* or 202–564–6586 to register to speak at the virtual hearing. The last day to pre-register to speak at the hearing will be November 6, 2020. On November 10, 2020, EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at: *https://www.epa.gov/csapr/revised-cross-state-air-pollution-update*.

EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have 5 minutes to provide oral testimony. EPA encourages commenters to provide EPA with a copy of their oral testimony electronically (via email) by emailing it to Ms. Kimberly Liu at *liu.kimberly@epa.gov*. EPA also recommends submitting the text of your oral comments as written comments to the rulemaking docket.

EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/csapr/revised-cross-state-air-pollution-update*. While EPA expects the hearing to go forward as set forth above, please monitor our website or contact Ms. Kimberly Liu at *liu.kimberly@epa.gov* or 202–564–6586 to determine if there are any updates. EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or special accommodations such as audio description, please pre-register for the hearing with Kimberly Liu at *liu.kimberly@epa.gov* or 202–564–6586 and describe your needs by November 5, 2020. EPA may not be able to arrange accommodations without advanced notice.

III. General Information

A. Does this action apply to me?

This proposed rule affects EGUs, and regulates the groups identified in Table III.A–1:

TABLE III.A–1—REGULATED GROUPS

Industry group	NAICS *
Fossil fuel-fired electric power generation	221112

* North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. For example, as discussed in Section VII.D.2 below, EPA is requesting comment on potential control strategies for emissions sources and industry sectors outside of the fossil fuel-fired power sector. Some of these industry sectors include cement, glass, chemical, and paper manufacturing, pipeline transportation, and oil and gas extraction. To determine whether your EGU entity is proposed to be regulated by this action, you should carefully examine the applicability criteria found in 40 CFR 97.804, which EPA is not proposing to alter in this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

IV. EPA's Legal Authority for the Proposed Rule

A. Statutory Authority

The statutory authority for this final action is provided by the CAA as amended (42 U.S.C. 7401 *et seq.*). Specifically, sections 110 and 301 of the CAA provide the primary statutory underpinnings for this action. The most relevant portions of CAA section 110 are subsections 110(a)(1), 110(a)(2) (including 110(a)(2)(D)(i)(I)), 110(c)(1), and 110(k)(6).

CAA section 110(a)(1) provides that states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and that these SIP submissions are to provide for the ''implementation, maintenance, and

enforcement'' of such NAAQS.[21] The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA taking any action other than promulgating a new or revised NAAQS.[22]

EPA has historically referred to SIP submissions made for the purpose of satisfying the applicable requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' or ''iSIP'' submissions. CAA section 110(a)(1) addresses the timing and general requirements for iSIP submissions, and CAA section 110(a)(2) provides more details concerning the required content of these submissions.[23] It includes a list of specific elements that ''[e]ach such plan'' submission must address.[24]

CAA section 110(c)(1) requires the Administrator to promulgate a FIP at any time within two years after the Administrator: (1) Finds that a state has failed to make a required SIP submission; (2) finds a SIP submission to be incomplete pursuant to CAA section 110(k)(1)(C); or (3) disapproves a SIP submission. This obligation applies unless the state corrects the deficiency through a SIP revision that the Administrator approves before the FIP is promulgated.[25]

CAA section 110(a)(2)(D)(i)(I), also known as the ''good neighbor provision,'' provides the primary basis for this proposal.[26] It requires that each state SIP include provisions sufficient to ''prohibit[ ], consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any [NAAQS].'' [27] EPA often refers to the emission reduction requirements under this provision as ''good neighbor obligations'' and submissions addressing these requirements as ''good neighbor SIPs.''

Once EPA promulgates a NAAQS, EPA must designate areas as being in ''attainment'' or ''nonattainment'' of the NAAQS, or ''unclassifiable.'' CAA section 107(d).[28] For ozone, nonattainment is further split into five classifications based on the severity of the violation—Marginal, Moderate, Serious, Severe, or Extreme. Higher classifications provide States with progressively more time to attain and additional control requirements. *See* CAA sections 181, 182.[29] In general, states with nonattainment areas classified as Moderate or higher must submit plans to EPA to bring these areas into attainment according to the statutory schedule. CAA section 182.[30] If an area fails to attain the NAAQS by the attainment date associated with its classification, it is ''bumped up'' to the next classification. CAA section 181(b).[31]

Section 301(a)(1) of the CAA also gives the Administrator the general authority to prescribe such regulations as are necessary to carry out functions under the Act.[32] Pursuant to this section, EPA has authority to clarify the applicability of CAA requirements and undertake other rulemaking action as necessary to implement CAA requirements. In this proposal, among other things, EPA is clarifying the applicability of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. In particular, EPA is using its authority under CAA sections 110 and 301 to issue new or amended FIPs to revise NO_X ozone season emission budgets for 12 states to eliminate their significant contribution to nonattainment or interference with maintenance of the 2008 ozone NAAQS in another state, and EPA is making findings as to 9 additional states that the CSAPR Update FIPs (or SIP revisions later approved to replace those FIPs) are a complete remedy and need no further revision.[33] In addition, EPA is obligated to respond to the D.C. Circuit's remand of the CSAPR Update in *Wisconsin* v. *EPA,* 938 F.3d 303, with respect to the 21 states for which the FIPs created by that rule were found to be only a partial remedy. This proposal, if finalized, will wholly resolve the Agency's obligations on remand. Finally, CAA section 301[34] affords the Agency any additional authority that may be needed in order to make certain other changes to its regulations under 40 CFR parts 52, 78, and 97, as discussed in Section VIII of this preamble.

B. Prior Good Neighbor Rulemakings Addressing Regional Ozone

EPA has issued several rules interpreting and clarifying the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the regional transport of ozone for states in the eastern United States. These rules, and the associated court decisions addressing these rules, summarized here, provide important direction regarding the requirements of CAA section 110(a)(2)(D)(i)(I).

The NO_X SIP Call, promulgated in 1998, addressed the good neighbor provision for the 1979 1-hour ozone NAAQS.[35] The rule required 22 states and the District of Columbia to amend their SIPs to reduce NO_X emissions that contribute to ozone nonattainment in downwind states. EPA set ozone season NO_X budgets for each state, and the states were given the option to participate in a regional trading program, known as the NO_X Budget Trading Program.[36] The D.C. Circuit largely upheld the NO_X SIP Call in *Michigan* v. *EPA,* 213 F.3d 663 (DC Cir. 2000), *cert. denied,* 532 U.S. 904 (2001).

EPA's next rule addressing the good neighbor provision, the Clean Air Interstate Rule (CAIR), was promulgated in 2005 and addressed both the 1997 fine particulate matter ($PM_{2.5}$) NAAQS and 1997 ozone NAAQS.[37] CAIR required SIP revisions in 28 states and the District of Columbia to reduce emissions of sulfur dioxide (SO_2) and/or NO_X—important precursors of regionally transported $PM_{2.5}$ (SO_2 and annual NO_X) and ozone (summer-time NO_X). As in the NO_X SIP Call, states were given the option to participate in regional trading programs to achieve the reductions. When EPA promulgated the

[21] 42 U.S.C. 7410(a)(1).

[22] *See EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489, 509–10 (2014).

[23] 42 U.S.C. 7410(a)(2).

[24] EPA's general approach to infrastructure SIP submissions is explained in greater detail in individual notices acting or proposing to act on state infrastructure SIP submissions and in guidance. *See, e.g.,* Memorandum from Stephen D. Page on Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2) (Sept. 13, 2013).

[25] 42 U.S.C. 7410(c)(1).

[26] 42 U.S.C. 7410(a)(2)(D)(i)(I).

[27] *Id.*

[28] 42 U.S.C. 7407(d).

[29] 42 U.S.C. 7511, 7511a.

[30] 42 U.S.C. 7511a.

[31] 42 U.S.C. 7511(b).

[32] 42 U.S.C. 7601(a)(1).

[33] 42 U.S.C. 7410, 7601.

[34] 42 U.S.C. 7601.

[35] 63 FR 57356 (Oct. 27, 1998). As originally promulgated, the NO_X SIP Call also addressed good neighbor obligations under the 1997 8-hour ozone NAAQS, but EPA subsequently stayed and later rescinded the rule's provisions with respect to that standard. *See* 84 FR 8422 (March 8, 2019).

[36] ''Allowance Trading,'' sometimes referred to as ''cap and trade,'' is an approach to reducing pollution that has been used successfully to protect human health and the environment. Trading programs have two key components: Emissions budgets (the sum of which provide a cap on emissions), and tradable allowances equal to the budgets that authorize allowance holders to emit a specific quantity (*e.g.,* one ton) of the pollutant. This approach ensures that the environmental goal is met while the tradable allowances provide flexibility for individual participants to establish and follow their own compliance path. Because allowances can be bought and sold in an allowance market, these programs are often referred to as ''market-based.''

[37] 70 FR 25162 (May 12, 2005).

final CAIR in 2005, EPA also issued findings that states nationwide had failed to submit SIPs to address the requirements of CAA section 110(a)(2)(D)(i) with respect to the 1997 $PM_{2.5}$ and 1997 ozone NAAQS.[38] On March 15, 2006, EPA promulgated FIPs to implement the emission reductions required by CAIR.[39] CAIR was remanded to EPA by the D.C. Circuit in *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), *modified on reh'g,* 550 F.3d 1176. For more information on the legal issues underlying CAIR and the D.C. Circuit's holding in *North Carolina,* refer to the preamble of the CSAPR rule.[40]

In 2011, EPA promulgated the CSAPR to address the issues raised by the remand of CAIR. The CSAPR addressed the two NAAQS at issue in CAIR and additionally addressed the good neighbor provision for the 2006 $PM_{2.5}$ NAAQS.[41] The CSAPR required 28 states to reduce SO_2 emissions, annual NO_X emissions, and/or ozone season NO_X emissions that significantly contribute to other states' nonattainment or interfere with other states' abilities to maintain these air quality standards.[42] To align implementation with the applicable attainment deadlines, EPA promulgated FIPs for each of the 28 states covered by the CSAPR. The FIPs require EGUs in the covered states to participate in regional trading programs to achieve the necessary emission reductions. Each state can submit a good neighbor SIP at any time that, if approved by EPA, would replace the CSAPR FIP for that state.

The CSAPR was the subject of an adverse decision by the D.C. Circuit in August 2012.[43] However, this decision was reversed in April 2014 by the Supreme Court, which largely upheld the rule, including EPA's approach to addressing interstate transport in the CSAPR. *EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489 (2014) (*EME Homer City I*). The rule was remanded to the D.C. Circuit to consider claims not addressed by the Supreme Court. *Id.* In July 2015 the D.C. Circuit generally affirmed EPA's interpretation of various statutory provisions and EPA's technical decisions. *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118 (2015) (*EME Homer City II*). However, the court remanded the rule without vacatur for reconsideration of EPA's emissions budgets for certain states, which the court found may have over-controlled those states' emissions with respect to the downwind air quality problems to which the states were linked. *Id.* at 129–30, 138. For more information on the legal issues associated with the CSAPR and the Supreme Court's and D.C. Circuit's decisions in the *EME Homer City* litigation, refer to the preamble of the CSAPR Update.[44]

In 2016, EPA promulgated the CSAPR Update to address interstate transport of ozone pollution with respect to the 2008 ozone NAAQS.[45] The final rule generally updated the CSAPR ozone season NO_X emissions budgets for 22 states to achieve cost-effective and immediately feasible NO_X emission reductions from EGUs within those states.[46] EPA aligned the analysis and implementation of the CSAPR Update with the 2017 ozone season in order to assist downwind states with timely attainment of the 2008 ozone NAAQS.[47] The CSAPR Update implemented the budgets through FIPs requiring sources to participate in a revised CSAPR NO_X ozone season trading program beginning with the 2017 ozone season. As under the CSAPR, each state can submit a good neighbor SIP at any time that, if approved by EPA, would replace the CSAPR Update FIP for that state. The final CSAPR Update also addressed the remand by the D.C. Circuit of certain states' CSAPR phase 2 ozone season NO_X emissions budgets in *EME Homer City II.* Further details regarding the CSAPR Update are discussed in Sections V.C.1.a–b below.

In December 2018, EPA promulgated the CSAPR ''Close-Out,'' which determined that no further enforceable reductions in emissions of NO_X were required with respect to the 2008 ozone NAAQS for 20 of the 22 eastern states covered by the CSAPR Update, and reflected that determination in revisions to the existing state-specific sections of the CSAPR Update regulations for those states.[48] Further details on the CSAPR Close-Out are discussed in Section V.C.1.c below.

The CSAPR Update and the CSAPR Close-Out were both subject to legal challenges in the D.C. Circuit. *Wisconsin* v. *EPA,* 938 F.3d 303 (D.C. Cir. 2019) (*Wisconsin*); *New York* v. *EPA,* 781 Fed. App'x 4 (D.C. Cir. 2019) (*New York*). As discussed in greater detail in Section V.C.1.d below, in September 2019, the D.C. Circuit upheld the CSAPR Update in virtually all respects, but remanded the rule because it was partial in nature and did not fully eliminate upwind states' significant contribution to nonattainment or interference with maintenance of the 2008 ozone NAAQS by ''the relevant downwind attainment deadlines'' in the CAA. *Wisconsin,* 938 F.3d at 313–15. In October 2019, the D.C. Circuit vacated the CSAPR Close-Out on the same grounds that it remanded the CSAPR Update in *Wisconsin,* specifically that the Close-Out rule did not analyze ''the next applicable attainment date'' of downwind states. *New York,* 781 Fed. App'x at 7.

V. Air Quality Issues Addressed and Overall Approach for the Proposed Rule

A. The Interstate Ozone Transport Challenge

Interstate transport of NO_X emissions poses significant challenges with respect to the 2008 ozone NAAQS in the eastern U.S. and thus presents a threat to public health and welfare.

1. Nature of Ozone and the Ozone NAAQS

Ground-level ozone is not emitted directly into the air but is created by chemical reactions between NO_X and volatile organic compounds (VOC) in

[38] 70 FR 21147 (April 25, 2005).

[39] 71 FR 25328 (April 28, 2006).

[40] 76 FR 48208, 48217 (Aug. 8, 2011).

[41] 76 FR 48208.

[42] The CSAPR was revised by several rulemakings after its initial promulgation in order to revise certain states' budgets and to promulgate FIPs for five additional states addressing the good neighbor obligation for the 1997 ozone NAAQS. See 76 FR 80760 (Dec. 27, 2011); 77 FR 10324 (Feb. 21, 2012); 77 FR 34830 (June 12, 2012).

[43] On August 21, 2012, the D.C. Circuit issued a decision in *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), vacating the CSAPR. EPA sought review with the D.C. Circuit *en banc* and the D.C. Circuit declined to consider EPA's appeal *en banc*. *EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302 (D.C. Cir. January 24, 2013), ECF No. 1417012 (denying EPA's motion for rehearing en banc).

[44] 81 FR 74504, 74511 (Oct. 26, 2016).

[45] 81 FR 74504.

[46] One state, Kansas, was made newly subject to the CSAPR ozone season NO_X requirement by the CSAPR Update. All other CSAPR Update states were already subject to ozone season NO_X requirements under the CSAPR.

[47] 81 FR 74516. EPA's final 2008 Ozone NAAQS SIP Requirements Rule, 80 FR 12264, 12268 (Mar. 6, 2015), revised the attainment deadline for ozone nonattainment areas designated as Moderate to July 20, 2018. *See* 40 CFR 51.1103. In order to demonstrate attainment by this deadline, states were required to rely on design values calculated using ozone season data from 2015 through 2017, since the July 20, 2018, deadline did not afford enough time for measured data of the full 2018 ozone season.

[48] 83 FR 65878, 65882 (Dec. 21, 2018). After promulgating the CSAPR Update and before promulgating the CSAPR Close-Out, EPA approved a SIP from Kentucky resolving that state's good neighbor obligations for the 2008 ozone NAAQS. 83 FR 33730 (July 17, 2018). In this action, EPA is proposing an error correction under CAA section 110(k)(6) to convert this approval to a disapproval, because the Kentucky approval relied on the same analysis which the D.C. Circuit determined to be unlawful in the CSAPR Close-Out. Our action with respect to Kentucky is discussed in Section V.C.2.b. below.

the presence of sunlight. Emissions from electric utilities and industrial facilities, motor vehicles, gasoline vapors, and chemical solvents are some of the major sources of NO_X and VOC.

Because ground-level ozone formation increases with temperature and sunlight, ozone levels are generally higher during the summer. Increased temperature also increases emissions of volatile man-made and biogenic organics and can indirectly increase NO_X emissions as well (*e.g.,* increased electricity generation for air conditioning).

The 2008 primary and secondary ozone standards are both 75 ppb as an 8-hour level.[49] Specifically, the standards require that the 3-year average of the fourth highest 24-hour maximum 8-hour average ozone concentration may not exceed 75 ppb as a truncated value (*i.e.,* digits to right of decimal removed).[50] In general, areas that exceed the ozone standard are designated as nonattainment areas, pursuant to the designations process under CAA section 107 and are subject to heightened planning requirements depending on the degree of severity of their nonattainment classification, *see* CAA sections 181, 182.

2. Ozone Transport

Studies have established that ozone formation, atmospheric residence, and transport occur on a regional scale (*i.e.,* thousands of kilometers) over much of the eastern U.S.[51] While substantial progress has been made in reducing ozone in many areas, interstate ozone transport is still an important component of peak ozone concentrations during the summer ozone season.

EPA has previously concluded in the NO_X SIP Call, CAIR, and the CSAPR that, for reducing regional-scale ozone transport, a NO_X control strategy would be most effective. NO_X emissions can be transported downwind as NO_X or, after transformation in the atmosphere, as ozone. As a result of ozone transport, in any given location, ozone pollution levels are impacted by a combination of local emissions and emissions from upwind sources. The transport of ozone pollution across state borders compounds the difficulty for downwind states in meeting health-based air quality standards (*i.e.,* NAAQS). Assessments of ozone, for example those conducted for the October 2015 Regulatory Impact Analysis of the Final Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone (EPA–452/R–15–007), continue to show the importance of NO_X emissions for ozone transport. This analysis is in the docket for this proposal and can be also found at EPA's website at: *https://www.epa.gov/ttnecas1/docs/20151001ria.pdf*.

Further, studies have found that EGU NO_X emission reductions can be effective in reducing individual 8-hour peak ozone concentrations and in reducing 8-hour peak ozone concentrations averaged across the ozone season. For example, a study that evaluates the effectiveness on ozone concentrations of EGU NO_X reductions achieved under the NO_X Budget Trading Program (*i.e.,* the NO_X SIP Call) shows that regulating NO_X emissions in that program was highly effective in reducing both ozone and dry-NO_3 concentrations during the ozone season. Further, this study indicates that EGU emissions, which are generally released higher in the air column through tall stacks and are significant in quantity, may disproportionately contribute to long-range transport of ozone pollution on a per-ton basis.[52]

Previous regional ozone transport efforts, including the NO_X SIP Call, CAIR, and the CSAPR, required ozone season NO_X reductions from EGUs to address interstate transport of ozone. EPA took comment on regulating EGU NO_X emissions to address interstate ozone transport in the notice-and-comment process for these rulemakings. EPA received no significant adverse comments in any of these proposals regarding the rules' focus on ozone season EGU NO_X reductions to address interstate ozone transport.

As described in Section VII, EPA's analysis finds that the power sector continues to be capable of making NO_X reductions at reasonable cost that reduce interstate transport with respect to ground-level ozone. EGU NO_X emission reductions can be made in the near-term under this proposal by fully operating existing EGU NO_X post-combustion controls (*i.e.,* Selective Catalytic Reduction)—including optimizing NO_X removal by existing operational controls and turning on and optimizing existing idled controls; installation of (or upgrading to) state-of-the-art NO_X combustion controls; and shifting generation to units with lower NO_X emission rates. Further, additional assessment reveals that these available EGU NO_X reductions would make meaningful and timely improvements in ozone air quality.

EPA also observes that significant emissions reduction potential from EGUs is available through the post-combustion control retrofit strategies. These controls reduce emissions and can have a meaningful air quality impact, but, in contrast to the controls discussed above, they are not available in the near-term, and are only available on a longer time frame (reflecting the time required to develop, construct, and install the technology) and are estimated to have a higher cost.

3. Health and Environmental Effects

Exposure to ambient ozone causes a variety of negative effects on human health, vegetation, and ecosystems. In humans, acute and chronic exposure to ozone is associated with premature mortality and a number of morbidity effects, such as asthma exacerbation. In ecosystems, ozone exposure causes visible foliar injury, decreases plant growth, and affects ecosystem community composition. *See* EPA's November 2014 Regulatory Impact Analysis of the Proposed Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone (EPA–452/P–14–006), in the docket for this proposal and available on EPA's website at: *http://www.epa.gov/ttn/ecas/regdata/RIAs/20141125ria.pdf*, for more information on the human health and welfare and ecosystem effects associated with ambient ozone exposure.

B. Relationship Between This Regulatory Action and the 2015 Ozone NAAQS

On October 1, 2015, EPA strengthened the ground-level ozone NAAQS to 70 ppb on an eight-hour averaging time, based on extensive scientific evidence about ozone's effects on public health and welfare.[53] While reductions achieved by this rule may have the effect of aiding in attainment and maintenance of the 2015 standard, this action is taken solely with respect to EPA's authority to address remaining CAA good neighbor obligations under the 2008 ozone NAAQS. EPA and states are working outside of this proposed action to address the CAA good

[49] 73 FR 16436 (Mar. 27, 2008).

[50] 40 CFR part 50, Appendix P to part 50.

[51] Bergin, M.S. et al. (2007) Regional air quality: Local and interstate impacts of NO_X and SO_2 emissions on ozone and fine particulate matter in the eastern United States. Environmental Sci & Tech. 41: 4677–4689.

[52] Butler, et al., ''Response of Ozone and Nitrate to Stationary Source Reductions in the Eastern USA''. *Atmospheric Environment,* 2011.

[53] 80 FR 65291 (Oct. 26, 2015). On July 13, 2020, based on a review of the full body of currently available scientific evidence and exposure/risk information, EPA proposed to retain the existing ozone NAAQS. *See https://www.epa.gov/ground-level-ozone-pollution/ozone-national-ambient-air-quality-standards-naaqs.*

neighbor provision for the 2015 ozone NAAQS.

C. Proposed Approach To Address the Remanded Transport Obligations for the 2008 Ozone NAAQS

1. Events Affecting Application of the Good Neighbor Provision for the 2008 Ozone NAAQS

EPA is taking this action to address the remand of the CSAPR Update in *Wisconsin* v. *EPA,* 938 F.3d 303 (D.C. Cir. 2019). This Section will discuss the key, relevant aspects of the CSAPR Update, the related CSAPR Close-Out, and the D.C. Circuit's decisions in *Wisconsin* and *New York* v. *EPA,* 781 Fed. App'x 4 (D.C. Cir. 2019) (the latter of which vacated the Close-out Rule based on the same reasoning as the *Wisconsin* decision remanding the Update). The basis for EPA's authority under CAA section 110(c) (42 U.S.C. 7410(c)) to promulgate good neighbor FIPs for the 21 states subject to this action on remand is discussed in Sections IV and V.C.2.

a. The CSAPR Update

On October 26, 2016, the CSAPR Update was published in the **Federal Register**. 81 FR 74504. The purpose of the CSAPR Update was to address the good neighbor provision for the 2008 ozone NAAQS, as well as address remanded CSAPR obligations for the 1997 ozone NAAQS. The CSAPR Update required EGUs in 22 states to reduce ozone season NO_X emissions that significantly contribute to other states' nonattainment or interfere with other states' abilities to maintain the 2008 ozone NAAQS.

To establish and implement the CSAPR Update emissions budgets, EPA followed the same four-step analytic process that it used in the CSAPR, an approach which reflects the evolution of the Agency's prior regional interstate transport rulemakings related to ozone NAAQS. The 4-step framework is described in more detail in Sections V.C.3 and VII.A.

In the CSAPR Update, to evaluate the scope of the interstate ozone transport problem at Step 1, EPA identified downwind areas that were expected to have problems attaining and maintaining the 2008 ozone NAAQS using modeling that projected air quality to a future compliance year. 81 FR 74517. EPA aligned the analysis and implementation of the CSAPR Update with the 2017 ozone season (May 1–September 30) in order to assist downwind states with attainment of the 2008 ozone NAAQS by the 2018 Moderate area attainment date. *Id.* at 74516. (EPA's final 2008 Ozone NAAQS SIP Requirements Rule established the attainment deadline of July 20, 2018, for ozone nonattainment areas classified as Moderate.[54]) Because the attainment date fell during the 2018 ozone season, the 2017 ozone season was the last full season from which data could be used to determine attainment of the NAAQS by that date.

At Step 2, EPA identified upwind states that collectively contribute to these identified downwind areas. In the CSAPR Update, EPA used a screening threshold of 1 percent of the NAAQS to identify states ''linked'' to downwind ozone problems sufficient for further evaluation for significant contribution to nonattainment or interference with maintenance of the NAAQS under the good neighbor provision. 81 FR 74518. This same threshold for analysis was used in the CSAPR as to the 1997 ozone NAAQS. *See* 76 FR at 48237–38.

At Step 3, EPA quantified emissions from upwind states that would significantly contribute to nonattainment or interfere with maintenance by first evaluating various levels of uniform NO_X control stringency, each represented by an estimated marginal cost per ton of NO_X reduced. EPA then applied the same multi-factor test that was used in the CSAPR to evaluate cost, available emission reductions, and downwind air quality impacts to determine the appropriate level of uniform NO_X control stringency that addressed the impacts of interstate transport on downwind nonattainment or maintenance receptors. EPA used this multi-factor assessment to gauge the extent to which emission reductions could be implemented in the future compliance year (*i.e.,* 2017) and to evaluate the potential for over- and under-control of upwind state emissions.

Within the multi-factor test, EPA identified a ''knee in the curve,'' *i.e.,* a point at which the cost-effectiveness of the emission reductions was maximized, so named for the discernable turning point observable in a multi-factor (*i.e.,* multi-variable) curve. *See* 81 FR 74550. EPA concluded that this was at the point where emissions budgets reflected a uniform NO_X control stringency represented by an estimated marginal cost of $1,400 per ton (2011$) of NO_X reduced. This cost threshold in turn represented a control strategy of installing or upgrading combustion controls and optimizing existing SCR controls. In light of this multi-factor test, EPA determined this level of stringency in emissions budgets represented the level at which incremental EGU NO_X reduction potential and corresponding downwind ozone air quality improvements were maximized—relative to other control stringencies evaluated—with respect to marginal cost. That is, the ratio of emission reductions to marginal cost and the ratio of ozone improvements to marginal cost were maximized relative to the other levels of control stringency evaluated. EPA found that feasible and cost-effective EGU NO_X reductions were available to make meaningful and timely improvements in downwind ozone air quality to address interstate ozone transport for the 2008 ozone NAAQS for the 2017 ozone season. *Id.* at 74508. Further, the Agency's evaluation showed that emissions budgets reflecting the $1,400 per ton cost threshold did not over-control upwind states' emissions relative to either the downwind air quality problems to which they were linked or the one percent contribution threshold in Step 2 that triggered their further evaluation in Step 3. *Id.* at 74551–52.

At Step 4, EPA finalized EGU ozone season NO_X emissions budgets developed using uniform control stringency represented by $1,400 per ton. These budgets represented emissions remaining in each state after elimination of the amounts of emissions that EPA identified would significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in downwind states. EPA promulgated FIPs requiring the covered power plants in the 22 covered states to participate in the CSAPR NO_X Ozone Season Group 2 Trading Program starting in 2017.[55]

b. Partial Nature of the CSAPR Update

At the time it promulgated the CSAPR Update, EPA considered the FIPs to be ''partial'' and that the rule ''may not be sufficient to fully address these states' good neighbor obligations'' for the 2008 ozone NAAQS for 21 of the 22 states included in that rule. 81 FR 74508, 74521 (Oct. 26, 2016). Based on information available at the time of the rule's promulgation, EPA was unable to conclude that the CSAPR Update fully addressed most of the covered states'

[54] 80 FR 12264, 12268 (Mar. 6, 2015); *see* 40 CFR 51.1103.

[55] The NO_X ozone season trading program created under the CSAPR was renamed the CSAPR NO_X Ozone Season Group 1 Trading Program and now applies only to sources in Georgia. In the CSAPR Update, EPA found that Georgia did not contribute to interstate transport with respect to the 2008 ozone NAAQS, but the state has an ongoing ozone season NO_X requirement under the CSAPR with respect to the 1997 ozone NAAQS.

good neighbor obligations for the 2008 ozone NAAQS. *Id.* at 74521. Information available at the time indicated that, even with the CSAPR Update implementation, several downwind receptors were expected to continue having problems attaining and maintaining this NAAQS and that emissions from upwind states were expected to continue to contribute greater than or equal to one percent of the NAAQS to these areas during the 2017 ozone season. *Id.* at 74551–52. Further, EPA could not conclude at that time whether additional EGU and non-EGU reductions implemented on a longer timeframe than 2017 would be necessary, feasible, and cost-effective to address states' good neighbor obligations for this NAAQS.

Additionally, EPA determined it was not feasible to complete an emissions control analysis that may otherwise have been necessary to evaluate full elimination of each state's significant contribution to nonattainment or interference with maintenance and also ensure that emission reductions already quantified in the rule would be achieved by 2017. *Id.* at 74522. EPA was unable to fully consider both non-EGU ozone season NO_X reductions and further EGU reductions that may have been achievable after 2017. *Id.* at 74521. *See* Section V.D.3 below.

Thus, EPA also could not make an emissions reduction-based conclusion that the CSAPR Update would fully resolve states' good neighbor obligations with respect to the 2008 ozone NAAQS because the reductions evaluated and required by the CSAPR Update were limited in scope (both by technology and sector). As a result of the remaining air quality problems and the limitations on EPA's analysis, for all but one of the 22 affected states, EPA did not determine in the CSAPR Update that the rule fully addressed those states' downwind air quality impacts under the good neighbor provision for the 2008 ozone NAAQS. *Id.* at 74521. For one state, Tennessee, EPA determined in the final CSAPR Update that Tennessee's emissions budget fully eliminated the state's significant contribution to downwind nonattainment and interference with maintenance of the 2008 ozone NAAQS because the downwind air quality problems to which the state was linked were projected to be resolved with implementation of the CSAPR Update. *Id.* at 74552.

c. The CSAPR Close-Out

Following implementation of the CSAPR Update and the approval of Kentucky's SIP (under a court-ordered deadline),[56] on December 21, 2018, EPA issued the CSAPR ''Close-Out'' to address any good neighbor obligations that remained for the 2008 ozone NAAQS for the 20 remaining states in the CSAPR Update region. *See* 83 FR 65878 (Dec. 21, 2018). The CSAPR Close-Out made a determination that, based on additional information and analysis, the CSAPR Update fully addressed the remaining 20 affected states' good neighbor obligations for the 2008 ozone NAAQS. In particular, EPA determined that 2023 was an appropriate future analytic year considering relevant attainment dates and the time EPA estimated to be necessary to implement new NO_X control technologies at EGUs. Based on EPA's analysis of projected air quality in that year, EPA determined that, for the purposes of addressing good neighbor obligations for the 2008 ozone NAAQS, there would be no remaining nonattainment or maintenance receptors in the eastern U.S. As a result of this determination, EPA found that, with continued implementation of the CSAPR Update, these 20 states would no longer contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to the 2008 ozone NAAQS. *Id.*

d. D.C. Circuit Decisions in Wisconsin v. EPA and New York v. EPA

The CSAPR Update was subject to petitions for judicial review, and the D.C. Circuit issued its opinion in *Wisconsin* v. *EPA* on September 13, 2019. 938 F.3d 303. The D.C. Circuit upheld the CSAPR Update in all respects save one: The court concluded that the CSAPR Update was inconsistent with the CAA to the extent that it was partial in nature and did not fully eliminate upwind states' significant contribution to nonattainment or interference with maintenance of the 2008 ozone NAAQS by the downwind states' 2018 Moderate attainment date. *Id.* at 313.

The court identified three bases for this holding: (1) The D.C. Circuit's prior opinion in *North Carolina* v. *EPA,* 531 F.3d 896 (2008), which held, in the context of CAIR, that the good neighbor provision requires states to eliminate significant contribution ''consistent with the provisions'' of Title I of the CAA, including the attainment dates applicable in downwind areas, 938 F.3d at 314 (citing 531 F.3d at 912); (2) the unreasonableness of EPA's interpretation of the phrase ''consistent with the provisions [of Title I]'' in the good neighbor provision as allowing for variation from the attainment schedule in CAA section 181 because it would enable significant contribution from upwind states to continue beyond that statutory timeframe, 938 F.3d at 315–18; and (3) the court's finding that the practical obstacles EPA identified regarding why it needed more time to implement a full remedy did not rise to the level of an ''impossibility,'' *id.* at 318–20. With respect to the third basis, the court also found EPA must make a higher showing of uncertainty regarding non-EGU point-source NO_X mitigation potential before declining to regulate such sources. *Id.* at 318–20.

However, the court identified flexibilities that EPA retains in administering the good neighbor provision, acknowledging that EPA has latitude in defining which upwind contribution ''amounts'' count as significant and thus must be abated, permitting EPA to consider, among other things, the magnitude of upwind states' contributions and the cost associated with eliminating them. 938 F.3d at 320. The court further noted that, in certain circumstances, EPA can grant extensions of the attainment deadlines under the Act; for instance, the court cited CAA section 181(a)(5), which allows EPA to grant one-year extensions from attainment dates under certain circumstances. *Id.* Finally, the court noted that EPA can attempt to show ''impossibility.'' *Id.* The court also recognized that the statutory command that compliance with the good neighbor provision must be achieved consistent with Title I might be read, upon a sufficient showing of necessity, to allow some deviation from downwind deadlines, so long as it is rooted in Title I's framework and provides a sufficient level of protection to downwind States. *Id.*

The court in *Wisconsin* remanded but did not vacate the CSAPR Update, finding that vacatur of the rule could cause harm to public health and the environment or disrupt the trading program EPA had established and that the obligations imposed by the rule may be appropriate and sustained on remand. *Id.* at 336. The court also rejected petitioners' request to place EPA on a six-month schedule to address the remand, noting the availability of ''mandamus'' relief before the D.C. Circuit should EPA fail to ''modify the rule in a manner consistent with our opinion.'' *Id.* at 336–37.

On October 1, 2019, in a judgment order, the D.C. Circuit vacated the CSAPR Close-Out on the same grounds

[56] 83 FR 33730 (July 17, 2018) (approval of Kentucky's SIP for the 2008 ozone NAAQS). *See* section V.C.2.b. for discussion of our proposed action for Kentucky in this notice.

that it remanded the Update in *Wisconsin. New York* v. *EPA,* 781 Fed. App'x 4 (D.C. Cir. 2019). Because the Close-Out analyzed the year 2023 rather than 2021 (''the next applicable attainment date'') and failed to demonstrate that it was impossible to address significant contribution by the 2021 attainment date, the court found the rule ran afoul of the *Wisconsin* holding. *Id.* at 7. ''As the EPA acknowledges, the Close-Out Rule 'relied upon the same statutory interpretation of the Good Neighbor Provision' that we rejected in *Wisconsin.* Thus, the Agency's defense of the Close-Out Rule in these cases is foreclosed.'' *Id.* at 6–7 (internal citation omitted). The court left open the possibility that the flexibilities identified in *Wisconsin,* 938 F.3d at 320, and outlined above, may be available to EPA on remand. *Id.*

Following *Wisconsin* and *New York,* EPA on remand must address good neighbor obligations for the 21 states within the CSAPR Update region for which the Update was only a partial remedy. As explained in the following section, EPA already retains FIP authority as to 20 of these states. In addition, EPA is proposing action pursuant to CAA section 110(k)(6) (42 U.S.C. 7410(k)(6)) to find that Kentucky's SIP was approved in error and is thus proposing a FIP for Kentucky consistent with the obligations proposed for the other remaining CSAPR Update region states.

2. FIP Authority for Each State Covered by the Proposed Rule

On March 12, 2008, EPA promulgated a revision to the ozone NAAQS, lowering both the primary and secondary standards to 75 ppb. *See* National Ambient Air Quality Standards for Ozone, Final Rule, 73 FR 16436 (March 27, 2008). Specifically, the standards require that an area may not exceed 0.075 parts per million (75 ppb) using the 3-year average of the fourth highest 24-hour maximum 8-hour rolling average ozone concentration. These revisions of the NAAQS, in turn, triggered a 3-year deadline for states to submit SIP revisions addressing infrastructure requirements under CAA sections 110(a)(1) and 110(a)(2), including the good neighbor provision. Several events affected the timely application of the good neighbor provision for the 2008 ozone NAAQS, including reconsideration of the 2008 ozone NAAQS and legal developments pertaining to the CSAPR, which created uncertainty surrounding EPA's statutory interpretation and implementation of the good neighbor provision.[57] Notwithstanding these events, EPA ultimately affirmed that states' good neighbor SIPs were due on March 12, 2011.

a. FIP Authority for CSAPR Update States

EPA subsequently took several actions that triggered EPA's obligation under CAA section 110(c) to promulgate FIPs addressing the good neighbor provision for several states.[58] First, on July 13, 2015, EPA published a rule finding that 24 states failed to make complete submissions that address the requirements of section 110(a)(2)(D)(i)(I) related to the interstate transport of pollution as to the 2008 ozone NAAQS. *See* 80 FR 39961 (effective August 12, 2015). This finding triggered a two-year deadline for EPA to issue FIPs to address the good neighbor provision for these states by August 12, 2017. The CSAPR Update finalized FIPs for 13 of these states (Alabama, Arkansas, Illinois, Iowa, Kansas, Michigan, Mississippi, Missouri, Oklahoma, Pennsylvania, Tennessee, Virginia, and West Virginia), requiring their participation in a NO_X trading program. EPA also determined in the CSAPR Update that the Agency had no further FIP obligation as to nine additional states identified in the finding of failure to submit because these states did not contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to the 2008 ozone NAAQS. *See* 81 FR 74506.[59] [60] On June 15, 2016, and July 20, 2016, EPA published additional rules finding that Maryland and New Jersey, respectively, also failed to submit transport SIPs for the 2008 ozone NAAQS. *See* 81 FR 38963 (June 15, 2016) (New Jersey, effective July 15, 2016); 81 FR 47040 (July 20, 2016) (Maryland, effective August 19, 2016). The finding actions triggered two-year deadlines for EPA to issue FIPs to address the good neighbor provision for Maryland by August 19, 2018, and for New Jersey by July 15, 2018. The CSAPR Update also finalized FIPs for these two states.

In addition to these findings, EPA finalized disapproval or partial disapproval actions for good neighbor SIPs submitted by Indiana, Kentucky, Louisiana, New York, Ohio, Texas, and Wisconsin.[61] These disapprovals triggered EPA's obligation to promulgate FIPs to implement the requirements of the good neighbor provision for those states within two years of the effective date of each disapproval or, in the case of Kentucky, within two years of the issuance of the judgment in a subsequent Supreme Court decision.[62] EPA promulgated FIPs in the CSAPR Update for each of these states.

As discussed in more detail above in section V.C.1, in issuing the CSAPR Update, EPA did not determine that it had entirely addressed EPA's outstanding CAA obligations to implement the good neighbor provision with respect to the 2008 ozone NAAQS for 21 of 22 states covered by that rule. Accordingly, the CSAPR Update did not fully satisfy EPA's obligation under CAA section 110(c) to address the good neighbor provision requirements for those states by approving SIPs, issuing FIPs, or some combination of those two actions. EPA found that the CSAPR Update FIPs fully addressed the good neighbor provision for the 2008 ozone NAAQS only with respect to Tennessee.

[57] These events are described in detail in section IV.A.2 of the CSAPR Update. *See* 81 FR 74515.

[58] This section of the preamble focuses on SIP and FIP actions for those states addressed in the CSAPR Update. EPA has also acted on SIPs for other states not mentioned in this action. The memorandum, ''Proposed Action, Status of 110(a)(2)(D)(i)(I) SIPs for the 2008 Ozone NAAQS,'' more fully describes the good neighbor SIP status for the 2008 ozone NAAQS and is available in the docket for this proposal.

[59] The nine states were Florida, Georgia, Maine, Massachusetts, Minnesota, New Hampshire, North Carolina, South Carolina, and Vermont. These determinations were not challenged in *Wisconsin,* and EPA is not reopening these determinations in this proposal.

[60] The two remaining states addressed in the findings of failure to submit (California and New Mexico) were not part of the CSAPR Update or the CSAPR Close-Out analysis and are not addressed in this proposal.

[61] *See* the following actions: Indiana (81 FR 38957, June 15, 2016); Kentucky (78 FR 14681, March 7, 2013); Louisiana (81 FR 53308, August 12, 2016); New York (81 FR 58849, August 26, 2016); Ohio (81 FR 38957, June 15, 2016); Texas (81 FR 53284, August 12, 2016); and Wisconsin (81 FR 53309, August 12, 2016).

[62] In the 2013 disapproval action for Kentucky, EPA stated that it had no mandatory duty to issue a FIP because of the D.C. Circuit's holding in *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), that EPA cannot impose good neighbor FIPs without first quantifying states' obligations. *See* 78 FR 14681. In 2014, the Supreme Court reversed the D.C. Circuit's holding. *EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489, 509–10 (2014). In light of the Supreme Court's decision, on review of our 2013 disapproval action for Kentucky in the Sixth Circuit, EPA requested, and the court granted, a vacatur and remand of the portion of EPA's final action that determined that a FIP obligation was not triggered. *See* Order, *Sierra Club* v. *EPA,* No. 13–3546, ECF No. 74–1 (6th Cir. Mar. 13, 2015). On remand, EPA determined that its FIP obligation as to Kentucky was triggered as of June 2, 2014, the date of issuance of the Supreme Court's judgment. *See* 81 FR 74513.

b. Correction of EPA's Determination Regarding Kentucky's SIP Revision and Its Impact on EPA's FIP Authority for Kentucky

After promulgating the CSAPR Update and before promulgating the CSAPR Close-Out, EPA approved a SIP from Kentucky resolving that state's good neighbor obligations for the 2008 ozone NAAQS. 83 FR 33730 (July 17, 2018). The action was separate from the CSAPR Close-Out because it was taken in response to a May 23, 2017 order from the U.S. District Court for the Northern District of California requiring EPA to take a final action fully addressing the good neighbor obligation for the 2008 ozone NAAQS for Kentucky by June 30, 2018.[63] EPA was obligated to address the outstanding obligation by either approving a SIP submitted by Kentucky or promulgating a FIP to address any remaining obligation.[64]

On May 10, 2018, Kentucky submitted a final SIP to EPA, on which the Agency finalized approval consistent with the court-ordered deadline. *See* 83 FR 33730. The Kentucky SIP revision that EPA approved relied on the reductions from the CSAPR Update FIP for Kentucky and provided a technical analysis, including emission projections and air quality modeling for 2023, showing that with the CSAPR Update level of reductions, the receptors to which Kentucky was linked were attaining and maintaining the 2008 ozone NAAQS in 2023. This allowed EPA to conclude that Kentucky did not have any further obligation for the 2008 ozone NAAQS, and EPA approved the SIP revision. Thus, the approval relied on the same rationale and technical analysis that was eventually used for the other CSAPR Update FIP states in the CSAPR Close-Out. EPA's approval stated:

''no additional emission reductions are necessary to address the good neighbor provision for the 2008 ozone NAAQS beyond those required by the Cross-State Air Pollution Rule Update (CSAPR Update) federal implementation plan (FIP). Accordingly, EPA is approving Kentucky's submission because it partially addresses the requirements of the good neighbor provision for the 2008 ozone NAAQS, and it resolves any obligation remaining under the good neighbor provision after promulgation of the CSAPR Update FIP. The approval of Kentucky's SIP submission and the CSAPR Update FIP, together, fully address the requirements of the good neighbor provision for the 2008 ozone NAAQS for Kentucky.''

83 FR 33730.

Subsequent to EPA's approval of the Kentucky SIP, EPA issued the CSAPR Close-Out, which concluded that, based on essentially the same analysis used for Kentucky, none of the other 20 CSAPR Update states had further good neighbor obligations to address the 2008 8-hour ozone NAAQS. In the Fall of 2019, the D.C. Circuit issued the *Wisconsin* and *New York* decisions remanding the CSAPR Update Rule and vacating the CSAPR Close-Out (see Section V.C.1.d.).

Kentucky's CSAPR Update FIP, which Kentucky relied on in its SIP revision, is part of the CSAPR Update remand, and EPA must address it in this action. Further, the D.C. Circuit's review of the CSAPR Close-Out found fault with, and vacated, the same rationale that EPA had used to approve Kentucky's SIP in June 2018.

Therefore, in light of the remand of Kentucky's CSAPR Update FIP in *Wisconsin* and vacatur of the CSAPR Close-Out in *New York,* EPA is proposing to determine in this action that its approval of Kentucky's SIP as fully resolving the state's 2008 ozone NAAQS good neighbor obligations was in error. Section 110(k)(6) of the CAA (42 U.S.C. 7410(k)(6)) gives the Administrator authority, without any further submission from a state, to revise certain prior actions, including actions to approve SIPs, upon determining that those actions were in error. The court's remand of the partial FIP for Kentucky in *Wisconsin* and the vacatur of EPA's conclusions for states identically situated to Kentucky in the CSAPR Close-Out means that EPA's approval of Kentucky's SIP was in error. EPA is compelled on remand to act consistently with the court's opinion and has reassessed Kentucky's good neighbor obligations under the 2008 ozone NAAQS here. In doing so, EPA's proposed analysis identifies an additional emission reduction obligation for Kentucky. Therefore, EPA is proposing to correct the error in Kentucky's SIP approval through this notice and comment rulemaking, as allowed by the CAA when a prior SIP approval was in error. The proposed error correction under CAA section 110(k)(6) would revise the approval of Kentucky's SIP to a disapproval and rescind any statements that the SIP submission fully addresses the requirements of the good neighbor provision for the 2008 ozone NAAQS for Kentucky. The Kentucky approval relied on the same analysis which the D.C. Circuit determined to be unlawful in the CSAPR Close-Out, because it only addressed conditions in 2023 without a showing of impossibility regarding the next attainment date in 2021. Kentucky's remanded partial FIP has been reassessed in this action, consistent with EPA's methodology to address the other 20 states with remanded CSAPR Update FIPs, and consistent with the D.C. Circuit's direction in *Wisconsin* and *New York*. As discussed in greater detail in the sections that follow, EPA proposes to determine that there are additional emission reductions that are required for Kentucky to fully satisfy its good neighbor obligation for the 2008 ozone NAAQS. The analysis on which EPA proposes this conclusion for Kentucky is the same, regionally consistent analytical framework on which the Agency proposes action for all of the other CSAPR Update states with remanded FIPs. The Agency recognizes that it is possible, based on updated information for the final rule—as applied within a regionally consistent analytical framework—that Kentucky (or other states for which EPA proposes revised FIPs in this action) may be found to have no further interstate transport obligation for the 2008 ozone NAAQS. If such a circumstance were to occur, EPA anticipates that it would not finalize this proposed error correction or may modify the error correction such that our July 2018 approval of Kentucky's SIP may be affirmed.

c. CSAPR Update SIP Revisions That Do Not Affect FIP Authority

Subsequent to the promulgation of the CSAPR Update, EPA approved SIPs fully replacing the CSAPR Update FIPs for Alabama, Indiana, and Missouri.[65] In those SIP approvals and consistent with the conclusions of the CSAPR Update, EPA found that the SIPs partially satisfy Alabama's, Indiana's, and Missouri's good neighbor obligations for the 2008 ozone NAAQS. Thus, EPA continues to have an obligation to fully address good neighbor requirements for the 2008 ozone NAAQS with respect to Alabama and Missouri, stemming from the July 13, 2015, findings of failure to submit, and Indiana, due to the June 15, 2016, disapproval of the state's good neighbor SIP. *See* 80 FR 39961; 81 FR 38957. Other states have also submitted 2008 ozone NAAQS good neighbor SIPs or

[63] *See* Order, *Sierra Club* v. *Pruitt,* No. 3:15–cv–04328 (N.D. Cal. May 23, 2017).

[64] The obligation ultimately derives from EPA's 2013 action disapproving Kentucky's SIP addressing the 2008 ozone NAAQS on the basis that Kentucky relied on the CAIR program for the 2008 ozone NAAQS good neighbor obligation. However, as previously discussed, the trigger for the timing of the obligation was the 2014 issuance of the Supreme Court's judgment in *EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489 (2014). *See supra* note 62.

[65] 82 FR 46674 (Oct. 6, 2017) (Alabama); 83 FR 64472 (Dec. 17, 2018) (Indiana); 84 FR 66316 (Dec. 4, 2019) (Missouri).

SIPs to replace their CSAPR FIPs, some of which EPA has approved and some of which still remain pending. Because these circumstances do not affect the scope or basis for this rulemaking, these actions are not described in detail in this section.

d. Summary of Authority for FIPs for This Action

Table V.C–1 summarizes the statutory deadline for EPA to address its FIP obligation under CAA section 110(c) and the event that activated EPA's obligation for each of the 21 CSAPR Update states that are the subject of this final action. For more information regarding the actions triggering EPA's FIP obligation and EPA's action on SIPs addressing the good neighbor provision for the 2008 ozone NAAQS, see the memorandum, ''Proposed Action, Status of 110(a)(2)(D)(i)(I) SIPs for the 2008 Ozone NAAQS,'' in the docket for this action.

TABLE V.C–1—ACTIONS THAT ACTIVATED EPA'S STATUTORY FIP DEADLINES

State	Type of action (**Federal Register** citation, publication date)	Statutory FIP deadline †
Alabama	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Arkansas	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Illinois	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Indiana	SIP disapproval (81 FR 38957, 6/15/2016)	7/15/2018
Iowa	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Kansas	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Kentucky	SIP disapproval (78 FR 14681, 3/7/2013)	6/2/2016
Louisiana	SIP disapproval (81 FR 53308, 8/12/2016)	9/12/2018
Maryland	Finding of Failure to Submit (81 FR 47040, 7/20/2016)	8/19/2018
Michigan	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Mississippi	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Missouri	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
New Jersey	Finding of Failure to Submit (81 FR 38963, 6/15/2016)	7/15/2018
New York	SIP disapproval (81 FR 58849, 8/26/2016)	9/26/2018
Ohio	SIP disapproval (81 FR 38957, 6/15/2016)	7/15/2018
Oklahoma	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Pennsylvania	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Texas	SIP disapproval (81 FR 53284, 8/12/2016)	9/12/2018
Virginia	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
West Virginia	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Wisconsin	Partial SIP disapproval as to prong 2 (81 FR 53309, 8/12/2016)	9/12/2018

† For states other than Kentucky, the FIP deadline is two years from the effective date of the SIP disapproval or Finding of Failure to Submit, which generally trails the publication date by 30 days. For Kentucky, the FIP deadline is two years after the issuance of the Supreme Court's judgment in *EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489 (2014). *See supra* note 62.

3. The 4-Step Good Neighbor Framework

The CSAPR and the subsequent CSAPR Update, building on EPA's prior methodologies in the NO_X SIP Call and CAIR, established a 4-step process to address the requirements of the good neighbor provision.[66] In this proposed action to address the remand of the CSAPR Update, EPA follows the same steps. These steps are: (1) Identifying downwind receptors that are expected to have problems attaining or maintaining the NAAQS; (2) determining which upwind states contribute to these identified problems in amounts sufficient to ''link'' them to the downwind air quality problems; (3) for states linked to downwind air quality problems, identifying upwind emissions that significantly contribute to downwind nonattainment or interfere with downwind maintenance of the NAAQS; and (4) for states that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind, implementing the necessary emissions reductions through enforceable measures.

Step 1—In the CSAPR, downwind air quality problems were assessed using modeled future air quality concentrations for a year aligned with attainment deadlines for the NAAQS considered in that rulemaking. The assessment of future air quality conditions generally accounts for on-the-books emission reductions and the most up-to-date forecast of future emissions in the absence of the transport policy being evaluated (*i.e.,* base case conditions). The locations of downwind air quality problems are identified as those with receptors that are projected to be unable to attain (*i.e.,* nonattainment receptor) or maintain (*i.e.,* maintenance receptor) the NAAQS. In the CSAPR Update, EPA also considered current monitored air quality data to further inform the projected identification of downwind air quality problems. These same considerations are included for this proposal. EPA is not reopening the definition of nonattainment and maintenance receptors promulgated in the CSAPR Update. Further details and application of Step 1 for this proposal are described in section VI.

Step 2—The CSAPR and the CSAPR Update used a screening threshold of 1 percent of the NAAQS to identify upwind states that were ''linked'' to downwind air pollution problems. States with contributions greater than or equal to the threshold for at least one downwind problem receptor (*i.e.,* nonattainment or maintenance receptor identified in Step 1) were identified as needing further evaluation for actions to address transport if their air quality was impacted.[67] EPA evaluated a given state's contribution based on the average relative downwind impact calculated over multiple days.[68] States whose air

[66] *See* CSAPR, Final Rule, 76 FR 48208, 48248–48249 (Aug. 8, 2011); CSAPR Update, Final Rule, 81 FR 74504, 74517–74521 (Oct. 26, 2016).

[67] For ozone the impacts would include those from (VOC) and NO_X, and from all sectors.

[68] The number of days used in calculating the average contribution metric has historically been determined in a manner that is generally consistent with EPA's recommendations for projecting future year ozone design values. Our ozone attainment demonstration modeling guidance at the time of CSAPR recommended using all model-predicted days above the NAAQS to calculate future year

Continued

quality impacts to all downwind problem receptors were below this threshold did not require further evaluation for actions to address transport—that is, these states were determined to not contribute to downwind air quality problems and therefore had no emission reduction obligations under the good neighbor provision. EPA has used this threshold because a notable portion of the transport problem in the eastern half of the United States can result from relatively small contributions from a number of upwind states. Use of the 1 percent threshold for the CSAPR is discussed in the preambles to the proposed and final CSAPR rules. *See* 75 FR 45237 (Aug. 2, 2010); 76 FR 48238 (Aug. 8, 2011). The same metric is discussed in the CSAPR Update Rule. *See* 81 FR 74538. While EPA has updated its air quality data for determining contributions, the Agency is not reopening the use of the 1 percent threshold in this action to address the remand of the CSAPR Update. Application of Step 2 for this proposal is described in section VI.

Step 3—For states that are linked in Step 2 to downwind air quality problems, the CSAPR and the CSAPR Update evaluated NO_X reductions that were available in upwind states by applying a uniform control technology (represented by a marginal cost of NO_X emissions) to entities in these states. EPA evaluated NO_X reduction potential, cost, and downwind air quality improvements available at several cost thresholds in the multi-factor test. In both the CSAPR and the CSAPR Update, EPA selected the cost-threshold that maximized cost-effectiveness (of the cost thresholds examined), that is, the level of stringency in emission budgets at which incremental NO_X reduction potential and corresponding downwind ozone air quality improvements are maximized with respect to marginal cost relative to the other emission budget levels evaluated. *See, e.g.,* 81 FR 74550. This evaluation quantified the magnitude of emissions that significantly contribute to nonattainment or interfere with maintenance of a NAAQS downwind and apportioned upwind responsibility among linked states, an approach upheld by the U.S. Supreme Court in *EPA* v. *EME Homer City*.[69] In general, EPA proposes in this action to apply this approach to identify NO_X emission reductions necessary to address significant contribution for the 2008 ozone NAAQS.

In *EME Homer City,* the Supreme Court held that ''EPA cannot require a State to reduce its output of pollution by more than is necessary to achieve attainment in every downwind State or at odds with the one-percent threshold the Agency has set.'' 572 U.S. at 521. The Court acknowledged that ''instances of 'over-control' in particular downwind locations may be incidental to reductions necessary to ensure attainment elsewhere.'' *Id.* at 492.

> ''Because individual upwind States often 'contribute significantly' to nonattainment in multiple downwind locations, the emissions reductions required to bring one linked downwind State into attainment may well be large enough to push other linked downwind States over the attainment line. As the Good Neighbor Provision seeks attainment in *every* downwind State, however, exceeding attainment in one State cannot rank as 'over-control' unless unnecessary to achieving attainment in *any* downwind State. Only reductions unnecessary to downwind attainment *anywhere* fall outside the Agency's statutory authority.''

Id. at 522 (footnotes excluded).

The Court further explained that ''while EPA has a statutory duty to avoid over-control, the Agency also has a statutory obligation to avoid 'under-control,' *i.e.,* to maximize achievement of attainment downwind.'' *Id.* at 523. Therefore, in the CSAPR Update, EPA evaluated possible over-control by considering whether an upwind state is linked solely to downwind air quality problems that can be resolved at a lower cost threshold, or if upwind states would reduce their emissions at a lower cost threshold to the extent that they would no longer meet or exceed the 1 percent air quality contribution threshold. *See* 81 FR at 74551–52. This evaluation of cost, NO_X reductions, and air quality improvements, including consideration of potential over-control, results in EPA's determination of upwind emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind and should therefore be eliminated. This allows EPA to then determine an enforceable emissions limit (often embodied in the form of an emissions budget) for the covered sources. Emissions budgets are the remaining allowable emissions after the elimination of emissions identified as significantly contributing to nonattainment or interfering with maintenance of the standard downwind.

In both the CSAPR and the CSAPR Update, EPA focused its Step 3 analysis on EGUs. In the CSAPR Update, EPA did not quantify non-EGU stationary source emissions reductions to address interstate ozone transport for the 2008 ozone NAAQS for two reasons. First, EPA explained that there was greater uncertainty in EPA's assessment of non-EGU NO_X mitigation potential, and that more time would be required for states and EPA to improve non-EGU point source data and pollution control assumptions before it could develop emission reduction obligations based on that data. *See* 81 FR 74542. Second, EPA explained that it did not believe that significant, certain, and meaningful non-EGU NO_X reduction was in fact feasible for the 2017 ozone season. *Id.* In *Wisconsin,* the D.C. Circuit found that the practical obstacles EPA identified with respect to its evaluation of non-EGUs did not rise to the level of an ''impossibility,'' 938 F.3d at 318–20. The court also found that EPA must make a higher showing of uncertainty regarding non-EGU point-source NO_X mitigation potential before declining to regulate such sources on such a basis, *id.* Therefore, as discussed in more detail in Section VII, in this proposed action on remand from *Wisconsin,* EPA has included all major stationary source sectors in the linked upwind states in its ''significant contribution'' analysis at Step 3 of the 4-step framework.

Step 4—CSAPR and the CSAPR Update established interstate trading programs to implement the necessary emission reductions. Each state subject to the program is assigned an emissions budget for the covered sources. Emissions allowances are allocated to units covered by the trading program, and the covered units then surrender allowances after the close of each control period in an amount equal to their ozone season EGU NO_X emissions.

EPA's trading programs under the good neighbor provision allow for interstate trading. However, in order to ensure that each state achieves reductions proportional to the level of their significant contribution, beginning with the CSAPR, EPA established ''assurance levels'' set as percentage of each state's budget (*e.g.,* 121 percent) above which emissions from sources in that state become subject to a higher ''penalty'' surrender ratio. These assurance levels are designed to allow for a certain level of year-to-year

design values (*https://www3.epa.gov/ttn/scram/guidance/guide/final-03-pm-rh-guidance.pdf*). In 2014 EPA issued draft revised guidance that changed the recommended number of days to the top-10 model predicted days (*https://www3.epa.gov/ttn/scram/guidance/guide/Draft-O3-PM-RH-Modeling_Guidance-2014.pdf*). For CSAPR Update we transitioned to calculating design values based on this draft revised approach. The revised modeling guidance was finalized in 2019 and, in this regard, we are calculating both the ozone design values and the contributions based on a top-10 day approach (*https://www3.epa.gov/ttn/scram/guidance/guide/O3–PM–RH-Modeling_Guidance-2018.pdf*).

[69] *EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489 (2014).

variability within power sector emissions to account for fluctuations in demand and EGU operations. The levels are therefore set by determining a ''variability limit,'' calculated based on an analysis of the historical level of variability in EGU operations.

Thus, both the CSAPR and the CSAPR Update set assurance levels equal to the sum of each state's emissions budget plus its variability limit. The CSAPR and the CSAPR Update included assurance provisions to limit state emissions to levels below 121 percent of the state's budget by requiring additional allowance surrenders in the instance that emissions in the state exceed this level. This limit on the degree to which a state's emissions can exceed its budget is responsive to previous court decisions (see discussion in section VIII.C.2 of this preamble) and was not part of the CSAPR Update aspects remanded to EPA in *Wisconsin.* EPA proposes to apply the same variability limits and assurance provisions in this rulemaking.[70] Implementation using a CSAPR trading program is further described in section VIII of this notice.

VI. Analyzing Downwind Air Quality and Upwind-State Contributions

In this section, EPA describes the air quality modeling and analyses performed to identify nonattainment and/or maintenance receptors and evaluate interstate contributions to these receptors from individual upwind states for the 2021 analytic year. Although the air quality modeling was performed using an air quality modeling platform that covers the contiguous 48 states, the analysis to identify receptors and evaluate contributions focuses on the 21 upwind states that are the subject of this rule.

The year 2021 was selected as the appropriate future analytic year for this rule because it coincides with the July 20, 2021, Serious area attainment date under the 2008 ozone NAAQS. In the CSAPR Update, EPA had aligned its analysis and implementation of emission reductions with the 2017 ozone season (ozone seasons run each year from May 1–September 30) in order to assist downwind states with timely attainment of the 2008 ozone NAAQS by the Moderate area attainment date of July 20, 2018. *See* 81 FR 74516. In order to demonstrate attainment by this deadline, states were required to rely on design values calculated using ozone season data from 2015 through 2017, since the July 20, 2018, deadline did not afford enough time for measured data of the full 2018 ozone season. Similarly, for the Serious area attainment date in 2021, states will rely on design values calculated using ozone season data from 2018 through 2020. However, it is not possible to impose emission reductions on upwind states in the 2020 ozone season, which has already passed. Reductions in the 2021 ozone season will nonetheless occur in time for the 2021 attainment date and therefore assist downwind states in achieving attainment by the July 20, 2021 attainment date, in compliance with the *Wisconsin* holding. *See Wisconsin,* 938 F.3d at 309 (the CSAPR Update is unlawful to the extent it allowed upwind states to ''continue their significant contributions to downwind air quality problems *beyond the statutory deadlines* by which downwind States must demonstrate their attainment of air quality standards'') (emphasis added). Further, EPA continues to interpret the good neighbor provision as forward-looking, based on Congress's use of the future-tense ''will'' in section 110(a)(2)(D)(i), an interpretation upheld in *Wisconsin,* 938 F.3d at 322. It would be ''anomalous,'' *id.,* for EPA to impose good neighbor obligations in 2021 and future years based solely on finding that ''significant contribution'' had existed at some time in the past.

EPA has also conducted additional analysis of remaining air quality receptors and contribution in years beyond 2021, in order to ensure a complete Step 3 analysis. EPA has analyzed these later years to determine whether any additional emission reductions that are impossible to obtain by the 2021 attainment date may yet be necessary in order to fully address significant contribution. This comports with the D.C. Circuit's direction in *Wisconsin* that implementing good neighbor obligations beyond the dates established for attainment may be justified on a proper showing of impossibility and/or necessity. *See* 938 F.3d at 320. However, for purposes of EPA's initial analysis of air quality at Step 1 of the 4-step framework, in accordance with *Wisconsin,* EPA has selected the 2021 ozone season, corresponding with the 2021 Serious area attainment date.

The remainder of this section includes information on (1) the air quality modeling platform used in support of the proposed rule with a focus on the base year and future year base case emission inventories, (2) the method for projecting design values in 2021, and (3) the approach for calculating ozone contributions from upwind states.[71] The Agency also provides the design values for nonattainment and maintenance receptors and the predicted interstate contributions that are at or above the one percent of the NAAQS screening threshold. The 2016 base period and 2021, 2023, and 2028 future design values and contributions for all ozone monitoring sites are provided in the docket for this proposed rule. The Air Quality Modeling Technical Support Document (AQM TSD) in the docket for this proposed rule contains more detailed information on the air quality modeling aspects of this rule.

A. Overview of Air Quality Modeling Platform

EPA used the 2016-based modeling platform for the air quality modeling for this proposed rule. This modeling platform includes 2016 base year emissions from anthropogenic and natural sources and 2016 meteorology. The platform also includes anthropogenic emission projections for 2023 and 2028. The emissions data contained in this platform were developed by EPA, Multi-Jurisdictional Organizations (MJOs), and state and local air agencies as part of the Emissions Inventory Collaborative Process. This process resulted in a common-use set of emissions data for a 2016 base year and 2023 and 2028 that can be leveraged by EPA and states for regulatory air quality modeling.[72] The air quality modeling was performed for a modeling region (*i.e.,* modeling domain) that covers the contiguous 48 states using a horizontal resolution of 12 x 12 km. EPA used the CAMx version 7beta6 for air quality modeling since this was the most recent version of CAMx available at the time the air quality modeling was performed.[73] Additional information on the 2016-based air quality modeling platform can be found in the AQM TSD.

B. Emissions Inventories

EPA developed emission inventories for this proposal, including emission estimates for EGUs, non-EGU point sources, stationary nonpoint sources,

[70] Historical heat input and NO_X emissions in states covered by the CSAPR programs may be found in the ''Historical CSAPR Update Emissions and Heat Input 2000 to 2019.xlsx'' file.

[71] For the 2023 and 2028 modeling used in the Step 3 analysis, EPA followed the same method for projecting design values and approach for calculating contributions as described for the 2021 analytic year.

[72] *http://views.cira.colostate.edu/wiki/wiki/9169.*

[73] Ramboll Environment and Health, May 2020, *www.camx.com.* Note that CAMx v7beta6 is a pre-release of version 7 that EPA used because the official release of version 7 did not occur until May 2020, which was too late for use in the air quality modeling for this proposal.

onroad mobile sources, nonroad mobile sources, wildfires, prescribed fires, and biogenic emissions that are not the result of human activities. EPA's air quality modeling relies on this comprehensive set of emission inventories because emissions from multiple source categories are needed to model ambient air quality and to facilitate comparison of model outputs with ambient measurements.

To prepare the emission inventories for air quality modeling, EPA processed the emission inventories using the Sparse Matrix Operator Kernel Emissions (SMOKE) Modeling System version 4.7 to produce the gridded, hourly, speciated, model-ready emissions for input to the air quality model. Additional information on the development of the emission inventories and on data sets used during the emissions modeling process are provided in the Technical Support Document (TSD) ''Preparation of Emissions Inventories for the 2016v1 North American Emissions Modeling Platform,'' hereafter known as the ''Emissions Modeling TSD.'' This TSD is available in the docket for this rule and at *https://www.epa.gov/air-emissions-modeling/2016v1-platform.*

1. Foundation Emission Inventory Data Sets

Emissions data were developed that represented the year 2016 to support air quality modeling of a base year from which future air quality could be forecasted. As noted above, EPA used the Inventory Collaborative 2016 version 1 (2016v1) Emissions Modeling Platform, released in October 2019, as the primary basis for the inventories supporting the air quality modeling. This platform was developed through a national collaborative effort between EPA and state and local agencies along with MJOs. The original starting point for the U.S. portions of the 2016 inventory was the 2014 National Emissions Inventory (NEI), version 2 (2014NEIv2), although all of the inventory sectors were updated to better represent the year 2016 through the incorporation of 2016-specific state and local data along with nationally applied adjustment methods. The future base case inventories developed for 2023 and 2028 represent projected changes in activity data and predicted emission reductions from on-the-books actions, planned emission control installations, and promulgated federal measures that affect anthropogenic emissions.[74]

2. Development of Emission Inventories for EGUs

Annual NO_X and SO_2 emissions for EGUs in the 2016 base year inventory are based primarily on data from continuous emission monitoring systems (CEMS) and other monitoring systems allowed for use by qualifying units under 40 CFR part 75, with other EGU pollutants estimated using emission factors and annual heat input data reported to EPA. For EGUs not reporting under part 75, EPA used the most recent data submitted to the NEI by the states. Emissions data for sources that did not have data provided for the year 2016 were pulled forward from data submitted for 2014. The Air Emissions Reporting Rule, (80 FR 8787; February 19, 2015), requires that Type A point sources large enough to meet or exceed specific thresholds for emissions be reported to EPA every year, while the smaller Type B point sources must only be reported to EPA every three years. For more information on how the 2016 EGU emissions data were developed and prepared for air quality modeling, see the Emissions Modeling TSD.

EPA projected future 2023 and 2028 baseline EGU emissions using the version 6—January 2020 reference case of the Integrated Planning Model (IPM).[75] [76] IPM, developed by ICF Consulting, is a state-of-the-art, peer-reviewed, multi-regional, dynamic, deterministic linear programming model of the contiguous U.S. electric power sector. It provides forecasts of least cost capacity expansion, electricity dispatch, and emission control strategies while meeting energy demand and environmental, transmission, dispatch, and reliability constraints. EPA has used IPM for over two decades to better understand power sector behavior under future business-as-usual conditions and to evaluate the economic and emission impacts of prospective environmental policies. The model is designed to reflect electricity markets as accurately as possible. EPA uses the best available information from utilities, industry experts, gas and coal market experts, financial institutions, and government statistics as the basis for the detailed power sector modeling in IPM. The model documentation provides additional information on the assumptions discussed here as well as all other model assumptions and inputs.[77]

The IPM version 6—January 2020 reference base case accounts for updated federal and state environmental regulations, committed EGU retirements and new builds, and technology cost and performance assumptions as of late 2019. This projected base case accounts for the effects of the finalized Mercury and Air Toxics Standards rule, the CSAPR and the CSAPR Update, New Source Review settlements, and other on-the-books federal and state rules through 2019[78] impacting SO_2, NO_X, directly emitted particulate matter, and CO_2, and final actions EPA has taken to implement the Regional Haze Rule.

Additional 2021 EGU emissions baseline levels were developed through engineering analytics as an alternative approach that did not involve IPM. EPA developed this inventory for use in Step 3 of this proposed rulemaking, where it determines emission reduction potential and corresponding emission budgets. IPM includes optimization and perfect foresight in solving for least cost dispatch. Given that the final rule will likely become effective either immediately prior to or slightly after the start of the 2021 ozone season, EPA adopted a similar approach to the CSAPR Update where it relied on IPM in a relative way in Step 3 to avoid overstating optimization and dispatch decisions that were not possible in the short time frame. EPA does this by using the difference in emission rate observed between IPM runs with and without the cost threshold applied, rather than using absolute values. In both the CSAPR Update and in this rule at Step 3, EPA complemented that projected IPM EGU outlook with historical (*e.g.,* engineering analytics) perspective based on historical data that only factors in known changes to the fleet. This 2021 engineering analytics data set is described in more detail in the Ozone Transport Policy Analysis TSD.

3. Development of Emission Inventories for non-EGU Point Sources

The non-EGU point source emissions in the 2016 base case inventory match those in the 2016v1 platform. Some non-EGU point source emissions were based on data submitted for 2016, others were projected from 2014 to 2016, and

[74] Biogenic emissions and emissions from wildfires and prescribed fires were held constant between 2016 and the future years because (1) these emissions are tied to the 2016 meteorological conditions and (2) the focus of this rule is on the contribution from anthropogenic emissions to projected ozone nonattainment and maintenance.

[75] *https://www.epa.gov/powersectormodeling.*

[76] The 2016v1 platform released in October 2019 used the May 2019 reference case. The January 2020 IPM reference case is a later version than what was released with 2016v1.

[77] Detailed information and documentation of EPA's Base Case, including all the underlying assumptions, data sources, and architecture parameters can be found on EPA's website at: *www.epa.gov/airmarkets/powersectormodeling.*

[78] For any specific version of IPM there is a cutoff date after which it is no longer possible to incorporate updates into the input databases. For version 6—January reference case, that cutoff date was November 2019.

the emissions for remaining small sources were kept at 2014 levels. Prior to air quality modeling, the emission inventories were processed into a format that is appropriate for the air quality model to use. Projection factors and percent reductions in this proposal reflect comments received as a result of the Inventory Collaborative development process, along with emission reductions due to national and local rules, control programs, plant closures, consent decrees, and settlements. Reductions from several Maximum Achievable Control Technology and National Emission Standards for Hazardous Air Pollutants (NESHAP) standards are included. Projection approaches for corn ethanol and biodiesel plants, refineries and upstream impacts represent requirements pursuant to the Energy Independence and Security Act of 2007 (EISA). Details on the development and processing of the non-EGU emissions inventories for 2016, 2023, and 2028 are available in the Emissions Modeling TSD.

For aircraft emissions at airports, the emissions used were based on adjustments to emissions in the 2017 NEI (see *https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data* for data and a TSD). EPA developed and applied factors to adjust the 2017 emissions to 2016, 2023, and 2028 based on activity growth projected by the Federal Aviation Administration Terminal Area Forecast system, published in 2018.

Emissions at rail yards were represented as non-EGU point sources. The 2016 rail yard emissions are largely consistent with the 2017 NEI rail yard emissions. The 2016, 2023, and 2028 rail yard emissions were developed through the Inventory Collaborative process. The rail yard emissions were interpolated from the 2016 and 2023 emissions. Class I rail yard emissions were projected using the Energy Information Administration's 2019 AEO freight rail energy use growth rate projections for 2016, 2023, and 2028 with the fleet mix assumed to be constant throughout the period.

Point source oil and gas emissions for 2016 were based on the 2016v1 point inventory, while nonpoint oil and gas emissions were primarily based on a run of EPA Oil and Gas Tool for the year 2016. The 2016 oil and gas inventories were projected to 2023 and 2028 using regional projection factors by product type based on Annual Energy Outlook (AEO) 2018 projections. NO_X and VOC reductions that are co-benefits to the NESHAP and New Source Performance Standards (NSPS) for Stationary Reciprocating Internal Combustion Engines (RICE) are reflected for select source categories. In addition, Natural Gas Turbines and Process Heaters NSPS NO_X controls and NSPS Oil and Gas VOC controls are reflected for select source categories. Additional information on the development and modeling of the oil and gas emission inventories can be found in the Emissions Modeling TSD.

4. Development of Emission Inventories for Onroad Mobile Sources

Onroad mobile sources include exhaust, evaporative, and brake and tire wear emissions from vehicles that drive on roads, parked vehicles, and vehicle refueling. Emissions from vehicles using regular gasoline, high ethanol gasoline, diesel fuel, and electric vehicles were represented, along with buses that used compressed natural gas. EPA developed the onroad mobile source emissions for states other than California using EPA's Motor Vehicle Emissions Simulator (MOVES) 2014b. MOVES2014b was used with inputs provided by state and local agencies, where available, in combination with nationally available data sets. Onroad emissions for the platform were developed based on emissions factors output from MOVES2014b run for the year 2016, coupled with activity data (*e.g.,* vehicle miles traveled and vehicle populations) representing the year 2016. The 2016 activity data were provided by some state and local agencies, and the remaining activity data were derived from the 2014NEIv2. The onroad emissions were computed within SMOKE by multiplying emission factors developed using MOVES with the appropriate activity data. Onroad mobile source emissions for California were consistent with the emissions provided by the state.

The future-year emissions for onroad mobile sources represent all national control programs known at the time of modeling except for the Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2 [79] and the Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule.[80] Finalized rules incorporated into the onroad mobile source emissions include: Tier 3 Standards (March 2014), the Light-Duty Greenhouse Gas Rule (March 2013), Heavy (and Medium)-Duty Greenhouse Gas Rule (August 2011), the Renewable Fuel Standard (February 2010), the Light Duty Greenhouse Gas Rule (April 2010), the Corporate-Average Fuel Economy standards for 2008–2011 (April 2010), the 2007 Onroad Heavy-Duty Rule (February 2009), and the Final Mobile Source Air Toxics Rule (MSAT2) (February 2007). Estimates of the impacts of rules that were in effect in 2016 are included in the 2016 base year emissions at a level that corresponds to the extent to which each rule had penetrated into the fleet and fuel supply by the year 2016. Local control programs such as the California LEV III program are included in the onroad mobile source emissions. The future year onroad emissions reflect projected changes to fuel properties and usage. MOVES was run for the years 2023 and 2028 to generate the emissions factors relevant to those years. Future year activity data for onroad mobile sources were provided by some state and local agencies, and otherwise were projected to 2023 and 2028 using AEO 2019-based factors. The future year emissions were computed within SMOKE by multiplying the future year emission factors developed using MOVES with the year-specific activity data. Additional information on the approach for generating the onroad mobile source emissions is available in the Emissions Modeling TSD.

5. Development of Emission Inventories for Commercial Marine Vessels

The commercial marine vessel (CMV) emissions in the 2016 base case emission inventory for this rule were based on those in the 2017 NEI. Factors were then applied to adjust the 2017 NEI emissions backward to represent emissions for the year 2016. The CMV emissions reflect reductions associated with the Emissions Control Area proposal to the International Maritime Organization control strategy (EPA–420–F–10–041, August 2010); reductions of NO_X, VOC, and CO emissions for new C3 engines that went into effect in 2011; and fuel sulfur limits that went into effect prior to 2016. The cumulative impacts of these rules through 2023 and 2028 were incorporated into the projected emissions for CMV sources. The CMV emissions were split into emissions inventories from the larger category 3 (C3) engines, and those from the smaller category 1 and 2 (C1C2) engines. Some minor adjustments to the CMV

[79] The effect of the HDGHG Phase 2 rule on criteria pollutants is estimated in Table 5–48 of the Regulatory Impact Analysis, available from *https://nepis.epa.gov/Exe/ZyPDF.cgi/P100P7NS.PDF?Dockey=P100P7NS.PDF.*

[80] Information on the SAFE vehicles rule is available from *https://www.epa.gov/regulations-emissions-vehicles-and-engines/safer-affordable-fuel-efficient-safe-vehicles-final-rule.* Preliminary analysis by the Office of Transportation and Air Quality of the impact of this rule on criteria pollutants show impacts of less than 1 percent for VOC and no impact for NO_X.

emissions were implemented following the October 2019 2016v1 release. These updated CMV inventories were released publicly by February, 2020.[81]

6. Development of Emission Inventories for Other Nonroad Mobile Sources

Nonroad mobile source emission inventories (other than CMV, locomotive, and aircraft emissions) were developed from monthly, county, and process level emissions output from MOVES2014b. MOVES2014b included important updates to nonroad engine population growth rates. Types of nonroad equipment include recreational vehicles, pleasure craft, and construction, agricultural, mining, and lawn and garden equipment. State-submitted emissions data for nonroad sources were used for California.

EPA also ran MOVES2014b for 2023 and 2028 to prepare nonroad mobile emissions inventories for future years. The nonroad mobile emission control programs include reductions to locomotives, diesel engines, and recreational marine engines, along with standards for fuel sulfur content and evaporative emissions. A comprehensive list of control programs included for mobile sources is available in the Emissions Modeling TSD.

Line haul locomotives are also considered a type of nonroad mobile source but the emissions inventories for locomotives were not developed using MOVES2014b. Year 2016 locomotive emissions were developed through the Inventory Collaborative and are mostly consistent with those in the 2017 NEI. The projected locomotive emissions for 2023 and 2028 were developed by applying factors to the base year emissions using activity data based on 2018 AEO freight rail energy use growth rate projections and emission rates adjusted to account for recent historic trends.

7. Development of Emission Inventories for Nonpoint Sources

The emissions for stationary nonpoint sources in our 2016 base case emission inventory are largely consistent with those in the 2014NEIv2, although some were adjusted to more closely reflect year 2016 using factors based on changes to human population from 2014 to 2016. Stationary nonpoint sources include evaporative sources, consumer products, fuel combustion that is not captured by point sources, agricultural livestock, agricultural fertilizer, residential wood combustion, fugitive dust, and oil and gas sources. For more information on the nonpoint sources in the 2016 base case inventory, see the Emissions Modeling TSD and the 2014NEIv2 TSD.

Where states provided the Inventory Collaborative information about projected control measures or changes in nonpoint source emissions, those inputs were incorporated into the projected inventories for 2023 and 2028. Adjustments for state fuel sulfur content rules for fuel oil in the Northeast were included. Projected emissions for portable fuel containers reflect the impact of projection factors required by the final MSAT2 rule and the EISA, including updates to cellulosic ethanol plants, ethanol transport working losses, and ethanol distribution vapor losses.

For 2016, nonpoint oil and gas emissions inventories were developed based on a run of EPA Oil and Gas Tool for 2016. To develop the future year inventories, regional projection factors for nonpoint oil and gas sources were developed by product type based on AEO 2018 projections to 2023 and 2028. Estimates of criteria air pollutant (CAP) co-benefit reductions resulting from the NESHAP for RICE and NSPS rules and Oil and Gas NSPS VOC controls for select source categories were included. Additional details on the application of these rules and projections for nonpoint sources are available in the Emissions Modeling TSD.

C. Air Quality Modeling and Analyses To Identify Nonattainment and Maintenance Receptors

In this section the Agency describes the air quality modeling and analyses performed in Step 1 to identify locations where the Agency expects there to be nonattainment or maintenance receptors for the 2008 8-hour ozone NAAQS in the 2021 analytic future year. Where EPA's analysis shows that an area or site does not fall under the definition of a nonattainment or maintenance receptor in 2021, that site is excluded from further analysis under EPA's good neighbor framework.

In this proposed rule, EPA is not reopening the approach used in the CSAPR Update to identify nonattainment and maintenance receptors. However, as an aid to understanding EPA's approach to identifying receptors, a summary of this approach follows.

EPA's approach gives independent effect to both the ''contribute significantly to nonattainment'' and the ''interfere with maintenance'' prongs of section 110(a)(2)(D)(i)(I), consistent with the D.C. Circuit's direction in *North Carolina*.[82] Further, in its decision on the remand of the CSAPR from the Supreme Court in the *EME Homer City* case, the D.C. Circuit confirmed that EPA's approach to identifying maintenance receptors in the CSAPR comported with the court's prior instruction to give independent meaning to the ''interfere with maintenance'' prong in the good neighbor provision. *EME Homer City II,* 795 F.3d at 136.

In the CSAPR Update, EPA identified 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 NO_X SIP Call and CAIR, where EPA defined nonattainment receptors as those areas that both currently monitor nonattainment and that EPA projects will be in nonattainment in the future compliance year.[83]

The Agency explained in the NO_X SIP Call and CAIR and then reaffirmed in the CSAPR Update that EPA has the most confidence in our projections of nonattainment for those counties that also measure nonattainment for the most recent period of available ambient data. EPA separately 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 period. 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). EPA also recognizes that previously experienced meteorological conditions (*e.g.,* dominant wind direction, temperatures, air mass patterns) promoting ozone formation that led to maximum concentrations in the measured data may reoccur in the future. The maximum design value

[81] See 2016 emissions, 2023 emissions, and 2028 emissions under *ftp://newftp.epa.gov/air/emismod/2016/v1/.*

[82] 531 F.3d at 910–911 (holding that EPA must give ''independent significance'' to each prong of CAA section 110(a)(2)(D)(i)(I)).

[83] *See* 63 FR 57375, 57377 (October 27, 1998); 70 FR 25241 (January 14, 2005). *See also North Carolina,* 531 F.3d at 913–914 (affirming as reasonable EPA's approach to defining nonattainment in CAIR).

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.

Therefore, applying this methodology in this proposed rule, EPA assessed the magnitude of the maximum projected design value for 2021 at each receptor in relation to the 2008 ozone NAAQS and, where such a value exceeds the NAAQS, EPA determined that 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 II*.[84] That is, monitoring sites with a maximum design value that exceeds the NAAQS are projected to have a maintenance problem in 2021.

Recognizing that nonattainment receptors are also, by definition, maintenance receptors, EPA often uses the term ''maintenance-only'' to refer to receptors that are not also nonattainment receptors. Consistent with the methodology described above, monitoring sites with a projected maximum design value that exceeds the NAAQS, but with a projected average design value that is below the NAAQS, are identified as maintenance-only receptors. In addition, those sites that are currently measuring ozone concentrations below the level of the applicable NAAQS, but are projected to be nonattainment based on the average design value and that, by definition, are projected to have a maximum design value above the standard are also identified as maintenance-only receptors.

As described above in section VI.B., EPA is using the 2016 and 2023 base case emissions developed under the EPA/MJO/state collaborative project as the primary source for base year and 2023 future year emissions data for this proposed rule. Because this platform does not include emissions for 2021, EPA developed an interpolation technique based on modeling for 2023 and measured ozone data to determine ozone concentrations for 2021. To estimate average and maximum design values for 2021, EPA first performed air quality modeling for 2016 and 2023 to obtain design values in 2023. The 2023 design values were then coupled with the corresponding 2016 measured design values to estimate design values in 2021 using the interpolation technique described below.

Consistent with EPA's modeling guidance,[85] the 2016 and 2023 air quality modeling results were used in a ''relative'' sense to project design values for 2023. That is, the ratios of future year model predictions to base year model predictions are used to adjust ambient ozone design values[86] up or down depending on the relative (percent) change in model predictions for each location. The modeling guidance recommends using measured ozone concentrations for the 5-year period centered on the base year as the air quality data starting point for future year projections. This average design value is used to dampen the effects of inter-annual variability in meteorology on ozone concentrations and to provide a reasonable projection of future air quality at the receptor under ''average'' conditions. In addition, the Agency calculated maximum design values from within the 5-year base period to represent conditions when meteorology is more favorable than average for ozone formation. Because the base year for the air quality modeling used in this proposed rule is 2016, the base period 2014–2018 ambient ozone design value data was used in order to project average and maximum design values in 2023.

The ozone predictions from the 2016 and 2023 air quality model simulations were used to project 2014–2018 average and maximum ozone design values to 2023 using an approach similar to the approach in EPA's guidance for attainment demonstration modeling. This guidance recommends using model predictions from the ''3 x 3'' array of grid cells[87] surrounding the location of the monitoring site to calculate a Relative Response Factor (RRF) for that site.[88] The 2014–2018 average and maximum design values were multiplied by the RRF to project each of these design values to 2023. In this manner, the projected design values are grounded in monitored data, and not the absolute model-predicted 2023 concentrations. In light of comments on the Notice of Data Availability (82 FR 1733; January 6, 2017) and other analyses, EPA also projected 2023 design values based on a modified version of the ''3 x 3'' approach for those monitoring sites located in coastal areas. In this alternative approach, EPA eliminated from the RRF calculations the modeling data in those grid cells that are dominated by water (*i.e.,* more than 50 percent of the area in the grid cell is water) and that do not contain a monitoring site (*i.e.,* if a grid cell is more than 50 percent water but contains an air quality monitor, that cell would remain in the calculation). The choice of more than 50 percent of the grid cell area as water as the criteria for identifying overwater grid cells is based on the treatment of land use in the Weather Research and Forecasting model (WRF).[89] Specifically, in the WRF meteorological model those grid cells that are greater than 50 percent overwater are treated as being 100 percent overwater. In such cases the meteorological conditions in the entire grid cell reflect the vertical mixing and winds over water, even if part of the grid cell also happens to be over land with land-based emissions, as can often be the case for coastal areas. Overlaying land-based emissions with overwater meteorology may be representative of conditions at coastal monitors during times of on-shore flow associated with synoptic conditions and/or sea-breeze or lake-breeze wind flows. But there may be other times, particularly with off-shore wind flow when vertical mixing of land-based emissions may be too limited due to the presence of overwater meteorology. Thus, for our modeling EPA calculated 2023 projected average and maximum design values at individual monitoring sites based on both the ''3 x 3'' approach as well as the alternative approach that eliminates overwater cells in the RRF calculation for near-coastal areas (*i.e.,* ''no water'' approach).

The 2023 average and maximum design values for both the ''3 x 3'' and ''no water'' approaches were then paired

[84] *See* 795 F.3d at 136.

[85] U.S. Environmental Protection Agency, 2018. Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze, Research Triangle Park, NC. *https://www.epa.gov/scram/state-implementation-plan-sip-attainment-demonstration-guidance.*

[86] The ozone design value at a particular monitoring site is the 3-year average of the annual 4th highest daily maximum 8-hour ozone concentration at that site.

[87] As noted above, each model grid cell is 12 x 12 km.

[88] The relative response factor represents the change in ozone based on emission changes at a given site. In order to calculate the RRF, EPA's modeling guidance recommends selecting the 10 highest ozone days in an ozone season at any given monitor in the base year, noting which of the grid cells in the 3x3 array experienced the highest ozone concentrations in the base year, and averaging those ten highest concentrations. The model is then run using the projected year emissions, in this case 2023, with all other model variables held constant. Ozone concentrations from the same ten days, in the same ten grid cells, are then averaged. The fractional change between the base year (2011 model run) averaged ozone concentrations and the future year (2023 model run) averaged ozone concentrations represents the relative response factor.

[89] *https://www.mmm.ucar.edu/weather-research-and-forecasting-model.*

with the corresponding base period measured design values at each ozone monitoring site. Design values for 2021 for both approaches were calculated by linearly interpolating between the 2016 base period and 2023 projected values.[90] The steps in the interpolation process for estimating 2021 average and maximum design values are as follows:

(1) Calculate the ppb change in design values between the 2016 base period and 2023;

(2) Divide the ppb change by 7 to calculate the ppb change per year over the 7-year period between 2016 and 2023;

(3) Multiply the ppb per year value by 5 to calculate the ppb change in design values over the 5-year period between 2016 and 2021;

(4) Subtract the ppb change between 2016 to 2021 from the 2016 design values to produce the design values for 2021.

The projected 2021 and 2023 design values using both the ''3 x 3'' and ''no-water'' approaches are provided in the AQM TSD.[91] EPA is soliciting public comment on the use of the ''3 x 3'' and ''no water'' approaches for this rulemaking (Comment C–2). For this proposed rule, EPA is relying upon design values based on the ''no water'' approach for identifying nonattainment and maintenance receptors.

Consistent with the truncation and rounding procedures for the 8-hour ozone NAAQS, the projected design values are truncated to integers in units of ppb.[92] Therefore, projected design values that are greater than or equal to 76 ppb are considered to be violating the 2008 ozone NAAQS. For those sites that are projected to be violating the NAAQS based on the average design values in 2021, the Agency examined the preliminary measured design values for 2019, which are the most recent available measured design values at the time of this proposal. As noted above, the Agency is proposing to identify nonattainment receptors in this rulemaking as those sites that are violating the NAAQS based on current measured air quality and also have projected average design values of 76 ppb or greater. Maintenance-only receptors include both (1) those sites with projected average design values above the NAAQS that are currently measuring clean data and (2) those sites with projected average design values below the level of the NAAQS, but with projected maximum design values of 76 ppb or greater. In addition to the maintenance-only receptors, the 2021 ozone nonattainment receptors are also maintenance receptors because the maximum design values for each of these sites is always greater than or equal to the average design value. The monitoring sites that the Agency projects to be nonattainment and maintenance receptors for the ozone NAAQS in the 2021 base case are used for assessing the contribution of emissions in upwind states to downwind nonattainment and maintenance of ozone NAAQS as part of this proposal.

Table VI.C–1 contains the 2014–2018 base period average and maximum 8-hour ozone design values, the 2021 base case average and maximum design values,[93] and the 2019 preliminary design values for the two sites that are projected to be nonattainment receptors in 2021 and the two sites that are projected to be maintenance-only receptors in 2021.[94] The design values for all monitoring sites in the U.S. are provided in the docket for this rule. Additional details on the approach for projecting average and maximum design values are provided in the AQM TSD.

TABLE VI.C–1—AVERAGE AND MAXIMUM 2014–2018 AND 2021 BASE CASE 8-HOUR OZONE DESIGN VALUES AND 2019 PRELIMINARY DESIGN VALUES (ppb) AT PROJECTED NONATTAINMENT AND MAINTENANCE-ONLY SITES

Monitor ID	State	Site	Average design value 2014–2018	Maximum design value 2014–2018	Average design value 2021	Maximum design value 2021	2019 Design value
Nonattainment Receptors							
090013007	CT	Stratford	83.0	83	76.5	77.4	82
090019003	CT	Westport	82.7	83	78.5	78.9	82
Maintenance-Only Receptors							
090099002	CT	Madison	79.7	82	74.0	76.1	82
482010024	TX	Houston	79.3	81	75.5	77.1	81

[90] EPA examined the 2019 design values as a way to support the set of monitoring sites that were identified as receptors based on the 2021 interpolated design values. The outcome of this analysis was that each of the five receptors in 2021 had 2019 measured design values that exceeded the 2008 NAAQS. In addition, there are four other monitoring sites in the eastern U.S. that are not projected to be receptors in 2021, but that have 2019 design values that exceeded the NAAQS. Because the measured design values at these sites are only 1 or 2 ppb above the NAAQS, it is reasonable to assume that these four sites will be clean by 2021—which is consistent with the projections for these monitoring sites. Thus, the analysis of 2019 measured data and 2021 projections provides confidence in the approach for identifying nonattainment/maintenance receptors in 2021.

[91] Based on the 2021 design values, there are 129 monitoring sites that have different design values based on the ''3 x 3'' approach vs the ''no-water'' approach. For these 129 monitoring sites, the average difference is 0.41 ppb and the median difference is 0.28 ppb. The average and median percent differences between the ''3 x 3'' and ''no-water'' design values at these 129 monitoring sites are 0.65 percent and 0.52 percent, respectively. Thus, there is not much difference in the design values between these two approaches.

[92] 40 CFR part 50, Appendix P to part 50—Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone.

[93] The design values for 2021 in this table are based on the ''no water'' approach.

[94] Using design values from the ''3 x 3'' approach does not change the total *number* of receptors in 2021. However, with the ''3 x 3'' approach the maintenance-only receptor in New Haven County, CT has a projected maximum design value of 75.5 ppb and would, therefore, not be a receptor using this approach. In contrast, monitoring site 090010017 in Fairfield County, CT has projected average and maximum design value of 75.7 and 76.3 ppb, respectively, with the ''3 x 3'' approach and would, therefore, be a maintenance-only receptor with this approach.

D. Pollutant Transport From Upwind States

1. Air Quality Modeling To Quantify Upwind State Contributions

This section documents the procedures EPA used to quantify the impact of emissions from specific upwind states on 2021 8-hour design values for the identified downwind nonattainment and maintenance receptors. EPA used CAMx photochemical source apportionment modeling to quantify the impact of emissions in specific upwind states on downwind nonattainment and maintenance receptors for 8-hour ozone. CAMx employs enhanced source apportionment techniques that track the formation and transport of ozone from specific emissions sources and calculates the contribution of sources and precursors to ozone for individual receptor locations. The strength of the photochemical model source apportionment technique is that all modeled ozone at a given receptor location in the modeling domain is tracked back to specific sources of emissions and boundary conditions to fully characterize culpable sources.

EPA performed nationwide, state-level ozone source apportionment modeling using the CAMx Ozone Source Apportionment Technology/Anthropogenic Precursor Culpability Analysis (OSAT/APCA) technique [95] to quantify the contribution of 2023 base case NO_X and VOC emissions from all sources in each state to projected 2023 ozone design values at air quality monitoring sites. The CAMx OSAT/APCA model run was performed for the period May 1 through September 30 using the projected 2023 base case emissions and 2016 meteorology for this time period. As described below, in the source apportionment modeling the Agency tracked (*i.e.,* tagged) the amount of ozone formed from anthropogenic emissions in each state individually as well as the contributions from other sources (*e.g.,* natural emissions).

To determine upwind contributions in 2021 the Agency applied the contributions from the 2023 modeling in a relative manner to the 2021 ozone design values. The analytic steps in the process are as follows:

(1) Calculate the 8-hour average contribution from each source tag to each monitoring site for the time period of the 8-hour daily maximum modeled concentrations in 2023;

(2) Average the contributions and concentrations for each of the top 10 modeled ozone concentration days in 2023 [96] and then divide the average contribution by the corresponding concentration to obtain a Relative Contribution Factor (RCF) for each monitoring site; and

(3) Multiply the 2021 design values by the 2023 RCF at each site to produce the average contribution metric values in 2021.[97] The resulting 2021 contributions from each tag to each monitoring site in the U.S. along with additional details on the source apportionment modeling and the procedures for calculating contributions can be found in the AQM TSD.

In the source apportionment model run, EPA tracked the ozone formed from each of the following tags:

- States—anthropogenic NO_X and VOC emissions from each state tracked individually (emissions from all anthropogenic sectors in a given state were combined);
- Biogenics—biogenic NO_X and VOC emissions domain-wide (*i.e.,* not by state);
- Boundary Concentrations—concentrations transported into the modeling domain;
- Tribes—the emissions from those tribal lands for which the Agency has point source inventory data in the 2016v1 emissions modeling platform (EPA did not model the contributions from individual tribes);
- Canada and Mexico—anthropogenic emissions from sources in the portions of Canada and Mexico included in the modeling domain (EPA did not model the contributions from Canada and Mexico separately);
- Fires—combined emissions from wild and prescribed fires domain-wide (*i.e.,* not by state); and
- Offshore—combined emissions from offshore marine vessels and offshore drilling platforms.

The contribution modeling provided contributions to ozone from anthropogenic NO_X and VOC emissions in each state, individually. The contributions to ozone from chemical reactions between biogenic NO_X and VOC emissions were modeled and assigned to the ''biogenic'' category. The contributions from wildfire and prescribed fire NO_X and VOC emissions were modeled and assigned to the ''fires'' category. That is, the contributions from the ''biogenic'' and ''fires'' categories are not assigned to individual states nor are they included in the state contributions.

The average contribution metric is intended to provide a reasonable representation of the contribution from individual states to the projected 2021 design value, based on modeled transport patterns and other meteorological conditions generally associated with modeled high ozone concentrations at the receptor. An average contribution metric constructed in this manner is beneficial since the magnitude of the contributions is directly related to the magnitude of the design value at each site.

The largest contribution from each state that is the subject of this rule to 8-hour ozone nonattainment and maintenance receptors in downwind states in 2021 is provided in Table VI.D–1.

[95] As part of this technique, ozone formed from reactions between biogenic VOC and anthropogenic NO_X or biogenic NO_X and anthropogenic VOC are assigned to the anthropogenic emissions. This approach is designed to fully capture as part of the anthropogenic contribution the total amount of ozone formed from photochemical reactions that involve emissions from all anthropogenic sources. In this manner, ozone is assigned to the controllable (*i.e.,* anthropogenic) precursors that react with non-controllable (*i.e.,* biogenic) precursors.

[96] The number of days used in calculating the average contribution metric has historically been determined in a manner that is generally consistent with EPA's recommendations for projecting future year ozone design values. Our ozone attainment demonstration modeling guidance at the time of CSAPR recommended using all model-predicted days above the NAAQS to calculate future year design values (*https://www3.epa.gov/ttn/scram/guidance/guide/final-03-pm-rh-guidance.pdf*). In 2014 EPA issued draft revised guidance that changed the recommended number of days to the top-10 model predicted days (*https://www3.epa.gov/ttn/scram/guidance/guide/Draft-O3-PM-RH-Modeling_Guidance-2014.pdf*). For CSAPR Update we transitioned to calculating design values based on this draft revised approach. The revised modeling guidance was finalized in 2019 and, in this regard, we are calculating both the ozone design values and the contributions based on a top-10 day approach (*https://www3.epa.gov/ttn/scram/guidance/guide/O3-PM-RH-Modeling_Guidance-2018.pdf*).

[97] The method for calculating the average contribution metric values in 2021 was also applied to 2023 and 2028 based on the projected design values and contribution modeling for each of those years, respectively.

TABLE VI.D–1.—LARGEST CONTRIBUTION TO DOWNWIND 8-HOUR OZONE NONATTAINMENT AND MAINTENANCE RECEPTORS IN 2021.

Upwind state	Largest downwind contribution to nonattainment receptors for ozone (ppb)	Largest downwind contribution to maintenance-only receptors for ozone (ppb)
Alabama	0.11	0.27
Arkansas	0.18	0.15
Illinois	0.81	0.80
Indiana	1.26	1.08
Iowa	0.17	0.22
Kansas	0.13	0.11
Kentucky	0.87	0.79
Louisiana	0.27	4.68
Maryland	1.21	1.56
Michigan	1.71	1.62
Mississippi	0.10	0.37
Missouri	0.36	0.33
New Jersey	8.62	5.71
New York	14.44	12.54
Ohio	2.55	2.35
Oklahoma	0.20	0.14
Pennsylvania	6.86	5.64
Texas	0.59	0.36
Virginia	1.30	1.69
West Virginia	1.49	1.55
Wisconsin	0.23	0.23

2. Application of Screening Threshold

EPA evaluated the magnitude of the contributions from each upwind state to downwind nonattainment and maintenance receptors. In Step 2 of the good neighbor framework, EPA uses an air quality screening threshold to identify upwind states that contribute to downwind ozone concentrations in amounts sufficient to ''link'' them to these to downwind nonattainment and maintenance receptors. The contributions from each of the CSAPR Update states to each downwind nonattainment and/or maintenance receptor that were used for the Step 2 evaluation can be found in the AQM TSD.

As discussed above in section V, EPA is not reopening the air quality screening threshold of 1 percent of the NAAQS used in the CSAPR Update. Therefore, as in the CSAPR Update, EPA uses an 8-hour ozone value for this air quality threshold of 0.75 ppb as the quantification of 1 percent of the 2008 ozone NAAQS.

a. States That Contribute Below the Screening Threshold

Of the 21 states that are the subject of this proposed rule, EPA has determined that the contributions from each of the following states to nonattainment and/or maintenance-only receptors in the 2021 analytic year are below the threshold: Alabama, Arkansas, Iowa, Kansas, Mississippi, Missouri, Oklahoma, Texas, and Wisconsin. Because these states are considered not to contribute to projected downwind air quality problems, EPA proposes to determine that the CSAPR Update FIPs for these states (or, in the case of Alabama and Missouri, the SIP revisions later approved to replace the states' CSAPR Update FIPs) are a complete remedy to address their significant contribution under the good neighbor provision for the 2008 ozone NAAQS. These states remain subject to the ozone season NO_X emission budgets established in the CSAPR Update, and EPA is not reopening the determinations in the CSAPR Update regarding these states.[98]

However, for each of these states, EPA notes that updates to the air quality and contributions analysis for the final rule could change the analysis as to which states have contributions to downwind receptors that meet or exceed the contribution screening threshold. In the event that such analysis conducted for the final rule demonstrates that any of those states that contribute amounts below the threshold in the proposal are projected to contribute amounts greater than or equal to the threshold in the final rule analysis, EPA proposes to apply the same Step 3 analysis applied to the linked states in this proposal and may finalize revised emissions budgets or other requirements (as presented for comment in this proposal) for such states. In order to ensure adequate notice of the potential for this change in our analysis between proposal and final and any resulting emission reduction obligations, EPA has calculated emissions budgets for EGUs in each of these nine states applying the same methodology and determinations used for the linked states in the Step 3 analysis described below. In addition, EPA would anticipate extending its proposed assessment of non-EGU sources (and associated requests for comment) for linked states to these states. Any adjustments in the implementation of the emissions budgets at Step 4 for linked states would also apply in these states. EPA is proposing to extend and apply any such analysis and/or emissions-reduction budgets to these states if, and only if, the final rule air quality modeling and other air quality and contribution analysis identifies a linkage as just described. The updated ozone season NO_X emission budgets that may be applied in these states are available in the Ozone Transport Policy Analysis TSD.

[98] EPA notes that the updated modeling establishing that these states no longer contribute as of 2021 assumes in its baseline the continued implementation of the CSAPR Update budgets in these states.

b. States That Contribute at or Above the Screening Threshold

In this proposed rule, states with remanded emission budgets under the CSAPR Update that contribute to a specific receptor in an amount at or above the screening threshold in 2021 are considered linked to that receptor. The ozone contributions and emissions (and available emission reductions) for these states are analyzed further at Step 3, as described in section VII, to determine whether and to what extent emissions reductions might be required from each state.

Based on the maximum downwind contributions in Table VI.D–1, the Step 2 analysis identifies that the following 11 states contribute at or above the 0.75 ppb threshold to downwind nonattainment receptors: Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia. Based on the maximum downwind contributions in Table VI.D–1, the following 12 states contribute at or above the 0.75 ppb threshold to downwind maintenance-only receptors: Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia. The levels of contribution between each of these linked upwind state and downwind nonattainment receptors and maintenance-only receptors are provided in Table VI.D–2 and Table VI.D–3, respectively.

TABLE VI.D–2—CONTRIBUTION (ppb) FROM EACH LINKED UPWIND STATE TO DOWNWIND NONATTAINMENT RECEPTORS IN 2021

Upwind state	Nonattainment receptors	
	Stratford, CT	Westport, CT
Illinois	0.69	0.81
Indiana	0.99	1.26
Kentucky	0.78	0.87
Louisiana	0.27	0.27
Maryland	1.21	1.20
Michigan	1.16	1.71
New Jersey	7.70	8.62
New York	14.42	14.44
Ohio	2.34	2.55
Pennsylvania	6.72	6.86
Virginia	1.29	1.30
West Virginia	1.45	1.49

TABLE VI.D–3—CONTRIBUTION (ppb) FROM EACH LINKED UPWIND STATE TO DOWNWIND MAINTENANCE-ONLY RECEPTORS IN 2021

Upwind state	Maintenance-only receptors	
	Madison, CT	Houston, TX
Illinois	0.80	0.02
Indiana	1.08	0.02
Kentucky	0.79	0.02
Louisiana	0.15	4.68
Maryland	1.56	0.00
Michigan	1.62	0.00
New Jersey	5.71	0.00
New York	12.54	0.00
Ohio	2.35	0.00
Pennsylvania	5.64	0.00
Virginia	1.69	0.00
West Virginia	1.55	0.00

In conclusion, as described above, states with contributions that equal or exceed 1 percent of the NAAQS to either nonattainment or maintenance receptors are identified as ''linked'' at Step 2 of the good neighbor framework and warrant further analysis for significant contribution to nonattainment or interference with maintenance under Step 3. EPA proposes that the following 12 States are linked at Step 2: Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia.

VII. Quantifying Upwind-State NO_X Reduction Potential To Reduce Interstate Ozone Transport for the 2008 Ozone NAAQS

A. The Multi-Factor Test

This section describes EPA's methodology at step 3 of the 4-step framework for identifying upwind emissions that constitute ''significant'' contribution for the states subject to this proposed rule. This analysis focuses on the 12 states linked at steps 1 and 2 of the framework, as identified in the sections above. Following the existing framework as applied in the CSAPR Update, EPA's assessment of linked upwind state emissions reflects analysis of uniform NO_X emission control stringency. The analysis has been extended to include assessment of non-EGU sources in addition to EGU sources in the linked upwind states.

Each level of uniform NO_X control stringency is represented by an estimated cost per ton of NO_X reduced and is characterized by a set of pollution control measures. EPA applies a multi-factor test—the same multi-factor test that was used in the CSAPR and the CSAPR Update [99]—to evaluate increasing levels of uniform NO_X control stringency. The multi-factor test, which is central to EPA's step 3 quantification of significant contribution, considers cost, available emission reductions, and downwind air quality impacts to determine the appropriate level of uniform NO_X control stringency that addresses the impacts of interstate transport on downwind nonattainment or maintenance receptors. The uniform NO_X emission control stringency, represented by marginal cost (or a weighted average cost in the case of EPA's non-EGU analysis), also serves to apportion the reduction responsibility among collectively contributing upwind states. This approach to quantifying upwind state emission-reduction obligations using uniform cost was reviewed by the Supreme Court in *EPA* v. *EME Homer City Generation,* which held that using such an approach to apportion emission reduction responsibilities among upwind states that are collectively responsible for downwind air quality impacts ''is an efficient and equitable solution to the allocation problem the Good Neighbor Provision requires the Agency to address.'' 572 U.S. at 519. There are four stages in developing the multi-factor test: (1) Identify levels of uniform NO_X control stringency, represented by an estimated cost-per-ton of control that is applied across linked upwind states; (2) evaluate potential NO_X emission reductions associated with each identified level of uniform control stringency; (3) assess air quality improvements at downwind receptors for each level of uniform control stringency; and (4) select a level of control stringency considering the identified cost, available NO_X emission reductions, and downwind air quality impacts, while also ensuring that emission reductions do not unnecessarily over-control relative to the contribution threshold or downwind air quality.

For both EGUs and non-EGUs, section VII.B describes the available mitigation technologies considered and their associated cost levels. Section VII.C discusses EPA's application of that information to assess emission reduction potential of the identified control strategies. Finally, section VII.D describes EPA's assessment of associated air quality impacts and EPA's subsequent identification of appropriate control stringencies considering the relevant factors (cost, available emission reductions, and downwind air quality impacts). As discussed in greater detail in section VII.D, EPA's multi-factor test informed EPA's determination of

[99] *See* CSAPR, Final Rule, 76 FR 48208 (Aug. 8, 2011).

appropriate EGU NO_X ozone season emission budgets necessary to reduce emissions that significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS for the 2021 ozone season and subsequent control periods. Application of the multi-factor test to non-EGU sources has led EPA to propose to conclude that emissions reductions from non-EGU sources are not necessary to address significant contribution under the 2008 ozone NAAQS. In light of uncertainty in its current information on emissions, existing controls on emissions sources, and emission-reduction potential for non-EGU sources, however, EPA requests comment on its analysis, and whether, based on updated or more complete information, there may be grounds to find non-EGU emissions reductions are necessary to address significant contribution for the 2008 ozone NAAQS (Comment C–3).

This multi-factor approach is consistent with EPA's approach in the prior CSAPR and CSAPR Update actions. In addition, as was done in the CSAPR Update, EPA evaluated possible over-control by determining if an upwind state is linked solely to downwind air quality problems that could have been resolved at a lower cost threshold, or if upwind states could reduce their emissions below the 1 percent air quality contribution threshold at a lower cost threshold. This analysis is described in section VII.D below.

B. Identifying Levels of Control Stringency

1. EGU NO_X Mitigation Strategies

In identifying levels of uniform control stringency for EGUs, EPA reassessed the same NO_X control strategies that it had analyzed in the CSAPR Update, all of which are considered to be widely available in this sector: (1) Fully operating existing SCR, including both optimizing NO_X removal by existing operational SCRs and turning on and optimizing existing idled SCRs; (2) installing state-of-the-art NO_X combustion controls; (3) turning on existing idled Selective Non-Catalytic Reduction (SNCRs); (4) installing new SNCRs; and (5) installing new SCRs. For the reasons explained in the EGU NO_X Mitigation Strategies TSD included in the docket for this proposed action, EPA determined that for the regional, multi-state scale of this rulemaking, only EGU NO_X control strategies 1 and 3 are possible for the 2021 ozone season (fully operating existing SCRs, including both optimizing NO_X removal by existing operational SCRs and turning on and optimizing existing idled SCRs; and turning on existing idled SNCRs). As discussed in section VII.B.1.b, EPA notes that it is not possible to install state-of-the-art NO_X combustion controls by the beginning of the 2021 ozone season on a regional scale. EPA considers state-of-the-art NO_X combustion controls at EGUs to be available by the beginning of the 2022 ozone season.

The following subsections describe EPA's identification of uniform levels of NO_X emission control stringencies, each represented by an estimated marginal cost per ton of NO_X reduced (in 2016$) and characterized by a set of EGU mitigation technologies.

a. $1,600 per Ton, Representing Optimizing Existing SCRs

Optimizing (*i.e.,* turning on idled or improving operation of partially operating) existing SCRs can substantially reduce EGU NO_X emissions quickly using investments that have already been made in pollution control technologies. With the promulgation of the CSAPR Update, most operators improved their SCR performance and have continued to maintain that level of improved operation. However, this SCR performance is not universal and some drop has been observed as the CSAPR Update ozone-season allowance price has declined steadily since 2017. For example, recent power sector data from 2019 reveal that, in some cases, operating units have SCR controls that have been idled or are operating partially, and therefore suggest that there remains reduction potential through optimization.[100] EPA finds that optimizing all of these remaining SCRs in the 12 linked states is a readily available approach for EGUs to reduce NO_X emissions.

EPA identifies $1,600 per ton as a level of uniform control stringency that represents optimizing SCR controls. EPA's analysis of this level of uniform control stringency is informed by comment on the CSAPR Update proposal and updated information on operation and industrial-input costs that have become available since the CSAPR Update.[101] While the costs of optimizing existing, operational SCRs include only variable costs, the cost of optimizing SCR units that are currently idled back into service considers both variable and fixed costs. Variable and fixed costs include labor, maintenance and repair, parasitic load, and ammonia or urea for use as a NO_X reduction reagent in SCR systems. EPA performed an in-depth cost assessment for all coal-fired units with SCRs. More information about this analysis is available in the EGU NO_X Mitigation Strategies Proposed Rule TSD, which is found in the docket for this proposed rule. The TSD notes that, for the subset of SCRs that are already partially operating, the cost of optimizing is often much lower than the $1,600 per ton marginal cost and often under $800 per ton.

EPA is using the same methodology to identify SCR performance as it did in the CSAPR Update rule. To estimate EGU NO_X reduction potential from optimizing, EPA considers the difference between the non-optimized NO_X emission rates and an achievable operating and optimized SCR NO_X emission rate. To determine this rate in the CSAPR Update, EPA evaluated nationwide coal-fired EGU NO_X ozone season emissions data from 2009 through 2015 and calculated an average NO_X ozone season emission rate across the fleet of coal-fired EGUs with SCR for each of these seven years. EPA found it prudent to not consider the lowest or second-lowest ozone season NO_X emission rates, which may reflect new SCR systems that have all new components (*e.g.,* new layers of catalyst). Data from these new systems are not representative of ongoing achievable NO_X emission rates considering broken-in components and routine maintenance schedules. To identify the potential reductions from SCR optimization in this proposed action, EPA followed the same methodology and incorporated the latest reported coal-fired EGU NO_X ozone season emissions data. EPA updated the timeframe to include the most recent and best available operational data (*i.e.,* 2009 up through 2019). Considering the emissions data over the full time period of available data results in a third-best rate of 0.08 Pounds per Million British Thermal Units (lb/mmBtu). EPA notes that over half of the SCR-controlled EGUs achieved a NO_X emission rate of 0.068 lbs/mmBtu or less over their third-best entire ozone season. Moreover, for the SCR-controlled coal units that EPA identified as having a 2019 emission rate greater than 0.08 lb/mmBtu, EPA verified that in prior years, the majority (over 90 percent) of these

[100] See ''Ozone Season Data 2018 vs. 2019'' and ''Coal-fired Characteristics and Controls'' at *https://www.epa.gov/airmarkets/power-plant-data-highlights#OzoneSeason.*

[101] The CSAPR Update found $1,400 per ton was a level of uniform control stringency that represented turning on idled SCR controls. EPA uses the same costing methodology, but updating for input cost increases (*e.g.,* urea reagent) to arrive at $1,600 per ton in this proposal (while also updated from 2011 dollars to 2016 dollars).

same units had demonstrated and achieved a NO_X emission rate of 0.08 lb/mmBtu or less on a seasonal and/or monthly basis. This further supports EPA's determination that 0.08 lb/mmBtu reflects a reasonable emission rate for representing SCR optimization in quantifying state emission budgets as discussed in section VIII.B. This fleet-level emission rate assumption of 0.08 lb/mmBtu for non-optimized units reflects, on average, what those units would achieve when optimized. Some of these units may achieve rates that are lower than 0.08 lb/mmBtu, and some units may operate above that rate based on unit-specific configuration and dispatch patterns. EPA evaluated the feasibility of optimizing idled SCRs for the 2021 ozone season. Based on past practice, EPA finds that idled controls can be restored to operation quickly (less than two months). This timeframe is informed by many electric utilities' previous long-standing practice of utilizing SCRs to reduce EGU NO_X emission during the ozone season while putting the systems into protective lay-up during the non-ozone season months. For example, this was the long-standing practice of many EGUs that used SCR systems for compliance with the NO_X Budget Trading Program. It was quite typical for SCRs to be turned off following the September 30 end of the ozone season control period. These controls would then be put into protective lay-up for several months of non-use before being returned to operation by May 1 of the following ozone season.[102] Therefore, EPA believes that SCR optimization mitigation strategies are available for the 2021 ozone season.

The vast majority of SCR controlled units (nationwide and in the 12 linked states) are already partially operating these controls during the ozone season based on historical 2019 emissions rates. EPA believes that this widely demonstrated seasonal behavior of turning on idled SCRs also supports the Agency's finding that optimizing existing SCR systems currently being operated to some degree within the ozone season, which would necessitate fewer changes to SCR operation relative to restarting idled systems, is also feasible for the 2021 ozone season. Full operation of existing SCRs that are already operating to some extent involves increasing reagent (*i.e.,* ammonia or urea) flow rate, and maintaining and replacing catalyst to sustain higher NO_X removal rate operations. Increasing NO_X removal by SCR controls that are already operating can be implemented by procuring more reagent and catalyst. EGUs with SCR routinely procure reagent and catalyst as part of ongoing operation and maintenance of the SCR system. In many cases, where EPA has identified EGUs that are operating their SCR at non-optimized NO_X removal efficiencies, EGU data indicate that these units historically have achieved more efficient NO_X removal rates. Therefore, EPA finds that optimizing existing SCRs currently being operated could generally be done by reverting back to previous operation and maintenance plans. Regarding full operation activities, existing SCRs that are only operating at partial capacity still provide functioning, maintained systems that may only require increased chemical reagent feed rate up to their design potential and catalyst maintenance for mitigating NO_X emissions. Units must have adequate inventory of chemical reagent and catalyst deliveries to sustain operations. Considering that units have procurement programs in place for operating SCRs, this may only require updating the frequency of deliveries. This may be accomplished within a few weeks.

b. $1,600 per Ton, Representing Installing State-of-the-Art NO_X Combustion Controls

EPA also includes installing state-of-the-art combustion controls in the level of uniform control stringency represented by $1,600 per ton. State-of-the-art combustion controls such as low-NO_X burners (LNB) and over-fire air (OFA) can be installed and/or updated quickly and can substantially reduce EGU NO_X emissions. In the 12 states linked to downwind receptors under this proposed rule, approximately 99 percent of coal-fired EGU capacity is equipped with some form of combustion control; however, the control configuration and/or corresponding emission rates at some units indicate they may not currently have state-of-the-art combustion control technology. Upgrading existing combustion controls to state-of-the-art combustion control alone can achieve NO_X emission rates of 0.139 to 0.155 lbs/mmBtu,[103] and, once installed, reduce NO_X emissions at all times of EGU operation. EPA proposes that the installation of state-of-the-art combustion controls is a readily available approach for EGUs to reduce NO_X emissions by the start of the 2022 ozone season.

EPA also finds that, generally, state-of-the-art combustion control upgrades require a short installation time—as little as four weeks to install with a scheduled outage (with permitting, design, order placement, fabrication, and delivery occurring beforehand). Feasibility of installing combustion controls was examined by EPA in CSAPR where industry demonstrated the ability to install state-of-the-art LNB controls on a large unit (800 MW) in under six months. EPA received comments in the CSAPR Update on installation of combustion controls from the Institute of Clean Air Companies.[104] Commenters provided information on the equipment and typical installation time frame for new combustion controls, accounting for all steps, and noted it generally takes between 6–8 months on a typical boiler—covering the time through bid evaluation through start-up of the technology. The deployment schedule was described as:

- 4–8 weeks—bid evaluation
- 4–6 weeks—engineering and completion of engineering drawings
- 2 weeks—drawing review and approval from user
- 10–12 weeks—fabrication of equipment and shipping to end user site
- 2–3 weeks—installation at end user site.
- 1 week—commissioning and start-up of technology

Given previous comments and EPA observations on past installations, EPA does not believe that it is possible to obtain installation of these controls between rule finalization and the start of the 2021 ozone season. However, EPA does believe the technology could be installed by the start of the 2022 ozone season. More details on these analyses can be found in the EGU NO_X Mitigation Strategies Proposed Rule TSD.

The cost of installing state-of-the-art combustion controls per ton of NO_X reduced is dependent on the combustion control type and unit type. EPA estimates the cost per ton of state-of-the-art combustion controls to be $400 per ton to $1,200 per ton of NO_X removed using a representative capacity

[102] In the 22 state CSAPR Update region, 2005 EGU NO_X emissions data suggest that 125 EGUs operated SCR systems in the summer ozone season while idling these controls for the remaining 7 non-ozone season months of the year. Units with SCR were identified as those with 2005 ozone season average NO_X rates that were less than 0.12 lbs/mmBtu and 2005 average non-ozone season NO_X emission rates that exceeded 0.12 lbs/mmBtu and where the average non-ozone season NO_X rate was more than double the ozone season rate.

[103] Details of EPA's assessment of state-of-the-art NO_X combustion controls are provided in the EGU NO_X Mitigation Strategies Proposed Rule TSD.

[104] EPA–HQ–OAR–2015–0500–0093

factor of 70 percent. See the NO_X Mitigation Strategies Proposed Rule TSD for additional details. In specifying a representative marginal cost at which state-of-the-art combustion controls are widely available, EPA considered all of these estimated costs and finds that the cost is typically comparable to the EGU NO_X control stringency of $1,600 per ton, and hence EPA includes installing state-of-the-art NO_X combustion controls in the uniform control stringency level represented by $1,600 per ton of NO_X removed.

c. $3,900 per ton, Representing Turning on Idled Existing SNCRs

Turning on idled existing SNCRs can also reduce EGU NO_X emissions quickly, using investments in pollution control technologies that have already been made. Compared to no post combustion controls on a unit, SNCRs can achieve a 25 percent reduction on average in EGU NO_X emissions (with sufficient reagent). These controls are in use to some degree across the U.S. power sector. In the 12 states identified in this proposed rule, approximately 14 percent of coal-fired EGU capacity is equipped with SNCR. Recent power sector data suggest that, in some cases, SNCR controls have been idled or operating less in 2019 relative to performance in prior years.[105] EPA finds that turning on idled SNCRs is an available approach for EGUs to reduce NO_X emissions, and similar to restarting idled SCR controls, could be done in time for the 2021 ozone season.

EPA identifies $3,900 per ton as a level of uniform control stringency that represents turning on and fully operating idled SNCRs. For existing SNCRs that have been idled, unit operators may need to restart payment of some fixed and variable costs associated with these controls. Fixed and variable costs include labor, maintenance and repair, parasitic load, and ammonia or urea. The majority of the total fixed and variable operating costs for SNCR is related to the cost of the reagent used (*e.g.,* ammonia or urea) and the resulting cost per ton of NO_X reduction is sensitive to the NO_X rate of the unit prior to SNCR operation. For more details on this assessment, refer to the EGU NO_X Mitigation Strategies Proposed Rule TSD in the docket for this proposed rule.

d. $5,800 per ton, Representing Installing New SNCRs.

The amount of time needed to retrofit an EGU with new SNCR extends beyond the 2021 Serious area attainment date. However, similar to SCR retrofits discussed in section VII.B.1.e, and consistent with the *Wisconsin* decision, EPA evaluated potential emission reductions and associated costs from this control technology, and assessed the impacts and need for this emissions control strategy at the earliest point in time when post combustion control installation could be achieved. SNCR installations, while generally having shorter project timeframes (*i.e.,* as little as 16 months for an individual power plant installing controls on more than one boiler), share similar implementation steps with and also need to account for the same regional factors as SCR installations.[106] For example, SNCR installation at the Jeffrey power plant (Kansas) was in the planning phase in 2013 but not in service until 2015.[107] Therefore, EPA finds that more than 16 months would be needed to complete all necessary steps of SNCR development at EGUs on a regional scale. EPA discusses the timing of SNCR and SCR post-combustion retrofits together and in more detail in section VII.C.1.

SNCR technology provides owners a relatively less capital-intensive option for reducing NO_X emissions compared to SCR technology, albeit at the expense of higher operating costs on a per-ton basis and less total emission reduction potential. EPA examined the remaining nationwide coal-fired fleet that lack SNCR or other NO_X post-combustion control to estimate a representative cost of SNCR installation (on a $ per ton basis). Costs were estimated using the operating and unit characteristics specific to this fleet. As described in the NO_X Mitigation Strategies Proposed Rule TSD, EPA proposes that $5,800 per ton is the representative cost of these controls reflecting a cost level at which they are available for a majority of the uncontrolled fleet.

e. $9,600 per ton, Representing Installing New SCRs.

The amount of time needed to retrofit an EGU with new SCR extends beyond the 2021 Serious area attainment date. However, similar to SNCR retrofits discussed above, and consistent with the *Wisconsin* decision, EPA evaluated potential emission reductions and associated costs from this control technology, as well as assessed the impacts and need for this emissions control strategy at the earliest point in time when their installation could be achieved. The amount of time to retrofit EGUs with new SCR varies between approximately 2 and 4 years depending on site-specific engineering considerations and on the number of installations being considered. In prior actions, EPA has noted 39–48 months as appropriate for regionwide actions when EPA is evaluating multiple installations at multiple locations.[108]

The Agency examined the cost for retrofitting a unit with new SCR technology, which typically attains controlled NO_X rates of 0.07 lbs/mmBtu or less. Based on the characteristics of the remaining nationwide coal fleet that does not have a post-combustion control retrofit, EPA determined that for unit and performance characteristics representative of that subgroup, $9,600 per ton was the cost level that represents the point at which the SCR retrofit technology was typically available for the majority of these sources. For more details on this assessment, refer to the EGU NO_X Mitigation Strategies Proposed Rule TSD in the docket for this proposed rule.

Generation shifting – Finally, for each of the technologies considered above, EPA evaluates emission reduction potential from generation shifting at that representative dollar per ton level. Shifting generation to lower NO_X-emitting or zero-emitting EGUs occurs in response to economic factors. As the cost of emitting NO_X increases, it becomes increasingly cost-effective for units with lower NO_X rates to increase generation, while units with higher NO_X rates reduce generation. Because the cost of generation is unit-specific, this generation shifting occurs incrementally on a continuum. Consequently, there is more generation shifting at higher cost NO_X-control levels. Because the Agency

[105] See ''Ozone Season Data 2018 vs. 2019'' and ''Coal-fired Characteristics and Controls'' at *https://www.epa.gov/airmarkets/power-plant-data-highlights#OzoneSeason*

[106] A month-by-month evaluation of SNCR installation is discussed in EPA's ''Engineering and Economic Factors Affecting the Installation of Control Technologies for Multipollutant Strategies'' at Exhibit A–6 and in EPA's NO_X Mitigation Strategies TSD. As noted at proposal, the analysis in this exhibit estimates the installation period from contract award as within a 10–13-month timeframe. The exhibit also indicates a 16-month timeframe from start to finish, inclusive of pre-contract award steps of the engineering assessment of technologies and bid request development. The timeframe cited for installation of SNCR at an individual source in this final action is consistent with this more complete timeframe estimated by the analysis in the exhibit.

[107] 2013 EIA Form 860, Schedule 6, Environmental Control Equipment.

[108] Final Report: Engineering and Economic Factors Affecting the Installation of Control Technologies for Multipollutant Strategies, EPA–600/R–02/073 (Oct. 2002), available at *https://nepis.epa.gov/Adobe/PDF/P1001G0O.pdf.*

has identified discrete cost thresholds resulting from the full implementation of particular types of emission controls, it is reasonable to simultaneously quantify and include the reduction potential from generation shifting at each cost level up to levels that are consistent with control operation. Including these reductions is important, ensuring that other cost-effective reductions (*e.g.,* fully operating controls) at each cost level can be expected to occur. Generation shifting treatment and results are discussed in greater detail in the NO_X Mitigation Strategies Proposed Rule TSD.

In general, when EPA estimates emission reduction potential from generation shifting, EPA finds small amounts of generation shifting to existing lower NO_X- emitting or zero-emitting units could occur consistent with the near-term implementation timing for this proposed rule. As a proxy for limiting the amount of generation shifting that is feasible for the near-term ozone seasons, EPA limits its assessment to shifting generation to other EGUs within the same state. EPA believes that limiting its evaluation of shifting generation (which EPA sometimes refers to as re-dispatch) to the amount that could occur within the state represents a conservatively small amount of generation-shifting because it does not capture further potential emission reductions that would occur if generation was shifted more broadly among units in different states within the interconnected electricity grid. EPA seeks comment on the extent to which generation shifting towards lower-emitting resources should be incorporated into the overall EGU emission reductions reflected in the state emission budgets (Comment C–4).

Finally, EPA seeks comment on whether other ozone-season NO_X mitigation technologies should be considered (Comment C–5). EPA invites comments on the cost and performance of the above listed technologies and any other potential mitigation technologies. For example, in January of 2020 the New York Department of Environmental Conservation adopted a rule to limit emissions from combustion turbines that operate as peaking units. EPA has not historically considered NO_X mitigation technologies for these sources in its rulemakings, such as the CSAPR and the CSAPR Update, but invites comment on their appropriateness for this rulemaking. Separately, location and high emission rates of grid-connected municipal solid waste combustors, generally not covered under EPA's transport rules given their small size and differing purpose, have also led some stakeholders to suggest mitigation measures be considered for those sources. EPA similarly invites comment on mitigation opportunities for all of these mitigation technologies discussed in this section and, in particular, requests comment on its discussion of these additional strategies in the NO_X Mitigation Strategies Proposed Rule TSD.

2. Non-EGU NO_X Mitigation Strategies

EPA has not regulated emissions from non-EGU sources as part of its regional transport rulemakings since the 1998 NO_X SIP Call. In *Wisconsin,* the D.C. Circuit held that EPA must on remand implement a full remedy by the next attainment date (2021 for this proposed rule), or as soon as possible thereafter on a showing of impossibility, to achieve necessary reductions by that date. 938 F.3d at 320. The court also directed the Agency to address non-EGU sources, unless ''the scientific uncertainty is so profound that it precludes EPA from making a reasoned judgment.'' *Id.* at 318–20 (quoting *Massachusetts* v. *EPA,* 549 U.S. 497, 534 (2007)). The D.C. Circuit found that the practical obstacles EPA identified with respect to its evaluation of non-EGUs in the CSAPR Update did not rise to the level of an ''impossibility,'' *id.* The court also found that EPA must make a higher showing of uncertainty regarding non-EGU point-source NO_X mitigation potential before declining to regulate such sources on the basis of ''uncertainty.'' *Id.* In this proposed rule, EPA has extended its analysis to include all major stationary source sectors in the linked upwind states, including non-EGU emissions sources in various industry sectors. As discussed in section VI, of the 22 states originally included in the CSAPR Update, EPA proposes in this action that 12 states warrant analysis at step 3 for significant contribution to downwind nonattainment and/or maintenance receptors for the 2008 ozone NAAQS. Therefore, the Agency focused its Step 3 assessment on non-EGU sources in these 12 states. For these sources, EPA retained its focus on NO_X as the most effective precursor pollutant for addressing interstate ozone transport at a regional scale. *See* 82 FR 51238, 51248 (Nov. 3, 2017) (citing 76 FR 48222) and 63 FR 57381.

For non-EGU sources, there are many types of emissions sources or units that emit NO_X and many control technologies or combinations of control technologies for these sources or units. As such, there are many approaches to assessing emission reduction potential from non-EGU emissions sources or units. In this assessment, EPA attempted to apply the multi-factor test used for EGUs to determine an appropriate stringency level for non-EGU sources in linked upwind states. EPA identified available control technologies and estimated their costs and potential emissions reductions. The information the Agency currently has regarding implementation timeframes to determine potential air quality impacts in relevant future years was also considered.

To identify levels of control for non-EGU sources, EPA used the Control Strategy Tool (CoST),[109] the Control Measures Database (CMDb), and the projected 2023 inventory from the 2016v1 modeling platform. EPA assessed potential emissions reductions associated with applying controls to emissions units with 150 tons per year (tpy) or more of pre-control NO_X emissions in 2023, which is an emissions threshold comparable to 25 MW for EGUs used in prior interstate transport rulemakings. To derive this emissions threshold, EPA used emissions expected from an average 25 MW EGU unit operating at a median heat rate, emission rate, and capacity factor for a coal-fired unit.[110] In CoST, the Agency used the maximum emission reduction strategy [111] to estimate the largest quantity of potential emissions reductions from each emissions source or unit located in the 12 upwind states linked to downwind receptors in this proposed rule. 11 of the 12 upwind states had sources with 150 tpy or more of pre-control NO_X emissions in 2023; the projected 2023 emissions inventory did not include non-EGU point sources in New Jersey with pre-control NOx emissions greater than 150 tpy for which CoST had applicable control measures.

For the 12 linked states, EPA categorized the CoST results for control technologies that comprise approximately 92 percent of the total estimated potential emissions

[109] Further information on CoST can be found at the following link: *https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-analysis-modelstools-air-pollution.*

[110] For additional details on calculating the 150 tpy emissions threshold, please see the section titled *Background for Determining Source Size/Threshold for Non-EGU Emissions Sources* in the memorandum titled *Assessing Non-EGU Emission Reduction Potential,* available in the docket for this proposed rule.

[111] The maximum emission reduction algorithm assigns to each source the single measure (if a measure is available for the source) that provides the maximum reduction to the target pollutant, regardless of cost. For more information, see the CoST User's Guide available at the following link: *https://www.cmascenter.org/cost/documentation/3.5/CoST%20User's%20Guide/.*

reductions from the non-EGU sources with 150 tpy or more of NO_X emissions in these states;[112] those technologies and related emissions sources are summarized in Table VII.B.2–1 below. In tranche one before further refinement and verification, the number of emissions units CoST applied SCR to was 51 and the number of emissions units CoST applied SNCR to was 23. The estimated emissions reductions from those control applications were 12,724 ozone season tons. In tranche two before further refinement and verification, the number of emissions units CoST applied layered combustion to was 49, the number of emissions units CoST applied NSCR or layered combustion to was 65, and the number of emissions units CoST applied ultra-low NO_X burner and SCR to was 56. The estimated emissions reductions from those control applications were 17,283 ozone season tons. EPA then calculated a weighted average cost per ton (in 2016$) for estimated potential reductions associated with each control technology and plotted the weighted average cost per ton values. From the resulting curve, EPA identified a clear break point that defined two tranches of potential emissions reductions, as shown in Table VII.B.2–1. For additional details on the curve and the potential emissions reductions in tranches one and two, please see the memorandum titled *Assessing Non-EGU Emission Reduction Potential,* available in the docket for this proposed rule.

TABLE VII.B.2–1—DETAILS ON TRANCHES ONE AND TWO OF POTENTIAL EMISSIONS REDUCTIONS

Tranche	Technologies/industry sectors or source groups	Weighted average cost (2016$ per ton)	Cost range (2016$ per ton)
Tranche One	SCR/Glass Manufacturing, IC Engines SNCR/Cement Manufacturing	2,000	64[113]–5,700
Tranche Two	Layered Combustion/Lean Burn IC Engines NSCR or Layered Combustion/Industrial Rich Burn Natural Gas IC Engines*. Ultra-low NO_X Burner and SCR/Industrial Boilers	5,000–6,600	1,400–9,700

Note: * NSCR is non-selective catalytic reduction, a control technology applicable to rich-burn natural gas-fired IC engines.

Given the large number of emissions units in a given industry sector that could require control installation, EPA does not have detailed information on the time needed to install all of the control technologies identified in Table VII.B.2–1. Any installation timing estimates would need to reflect the time needed to install controls across a potentially large number of sources, the time needed to have NO_X monitoring installed, and other steps in the permitting and construction processes. EPA previously examined the time necessary to install some of the controls indicated in Table VII.B.2–1 for different industries in the 2016 *Final Technical Support Document (TSD) for the Final Cross-State Air Pollution Rule for the 2008 Ozone NAAQS, Assessment of Non-EGU* NO_X *Emission Controls, Cost of Controls, and Time for Compliance Final TSD* (''CSAPR Update Non-EGU TSD''), which is discussed in Section VII.C.2. EPA expects that the controls for glass furnaces and cement kilns would take at least 2 years to install on a sector-wide basis across the 12-state region affected by this proposed rule. Therefore, based on the information available to us at this time, EPA proposes that the 2023 ozone season is the earliest ozone season by which these non-EGU controls could likely be installed. EPA thus concludes that no NO_X controls for non-EGUs included in this cost analysis can be installed by the 2021 ozone season. Additional information on installation times for non-EGU NO_X controls can be found in Section VII.C.

3. Mobile Source NO_X Mitigation Strategies

Under a variety of CAA programs, EPA has established federal emissions and fuel quality standards that reduce emissions from cars, trucks, buses, nonroad engines and equipment, locomotives, marine vessels, and aircraft (*i.e.,* ''mobile sources''). Because states are generally preempted from regulating new vehicles and engines with certain exceptions (*see generally* CAA sections 209, 177), mobile source emissions are primarily controlled through EPA's federal programs. EPA has been regulating mobile source emissions since it was established as a federal agency in 1970, and all mobile source sectors are currently subject to NO_X emissions standards. EPA factors these standards and associated emission reductions into its baseline air quality assessment in good neighbor rulemaking, including in this action. Such reductions are an important reason for the historical and long-running trend of improving air quality in the United States. These trends help explain why the overall number of receptors and severity of ozone nonattainment problems under the 2008 ozone NAAQS continues to decline. Such data are factored into EPA's analysis at steps 1 and 2 of the 4-step framework. As a result of this long history, NO_X emissions from onroad and nonroad mobile sources have substantially decreased (73 percent and 57 percent since 2002, for onroad and nonroad, respectively)[114] and are predicted to continue to decrease into the future as newer vehicles and engines that are subject to the most recent, stringent standards replace older vehicles and engines.[115]

For example, in 2014 EPA promulgated new, more stringent emissions and fuel standards for light-

[112] CoST applied a few additional controls that are not commonly used and did not result in significant additional emissions reductions. Ten different control technology applications make up the remaining 8 percent of the control technology applications. Compared to the five technologies EPA assessed further, these ten control technology applications do not, individually or collectively, have the potential to result in significant additional emissions reductions. For additional details, see the technical memorandum titled *Assessing Non-EGU Emission Reduction Potential* and the Excel workbook titled *Control Summary—Max Emission Reduction $10k 150 tpy cutoff 12 States Updated Modeling—No Replace—05-18-2020.xlsx* in the docket for this proposed rule.

[113] For the emissions unit estimated to generate emissions reductions at $64 per ton, the emissions and cost estimates were incorrect. The 2023 projected emissions for the unit were significantly overestimated as a result of a growth factor EPA received for these emissions from a multi-jurisdictional partner organization. Further, the equation used to estimate the cost was mis-specified in CoST, and the true cost is likely on the order of $800 per ton. Changes to these underlying factors will likely guide an updated assessment for a final rulemaking.

[114] US EPA. Our Nation's Air: Status and Trends Through 2019. *https://gispub.epa.gov/air/trendsreport/2020/#home.*

[115] National Emissions Inventory Collaborative (2019). 2016v1 Emissions Modeling Platform. Retrieved from *http://views.cira.colostate.edu/wiki/wiki/10202.*

duty passenger cars and trucks.[116] The fuel standards took effect in 2017, and the vehicle standards are phasing in between 2017 and 2025. Other EPA actions that are continuing to reduce NO_X emissions include the Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements (66 FR 5002; January 18, 2001); the Clean Air Nonroad Diesel Rule (69 FR 38957; June 29, 2004); the Locomotive and Marine Rule (73 FR 25098; May 6, 2008); the Marine Spark-Ignition and Small Spark-Ignition Engine Rule (73 FR 59034; October 8, 2008); the New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder Rule (75 FR 22895; April 30, 2010); and the Aircraft and Aircraft Engine Emissions Standards (77 FR 36342; June 18, 2012).

EPA is currently developing a new regulatory effort to reduce NO_X and other pollution from heavy-duty trucks (known as the Cleaner Trucks Initiative), as described in the January 21, 2020, Advance Notice of Proposed Rulemaking (85 FR 3306). Heavy-duty vehicles are the largest contributor to mobile source emissions of NO_X and will be one of the largest mobile source contributors to ozone in 2025.[117] Reducing heavy-duty vehicle emissions nationally would improve air quality where the trucks are operating as well as downwind. As required by CAA section 202(a)(3)(A) of the Act, EPA will be proposing NO_X emission standards that ''reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology.'' Section 202(a)(3)(C) requires that standards apply for no less than 3 model years and apply no earlier than 4 years after promulgation.

Given these requirements, EPA is considering implementation of new heavy-duty NO_X emission standards beginning in model year 2027. In addition, any new rulemaking process for other mobile source sectors would not achieve actual NO_X emissions reductions before 2025, given the lead time necessary for EPA and for manufacturers.

However, EPA's existing regulatory program will continue to reduce NO_X emissions into the future, and EPA is currently taking active steps to ensure that these NO_X reductions occur. The CAA prohibits tampering with emissions controls, as well as manufacturing, selling, and installing aftermarket devices intended to defeat those controls. EPA currently has a National Compliance Initiative called ''Stopping Aftermarket Defeat Devices for Vehicles and Engines,'' which focuses on stopping the manufacture, sale, and installation of hardware and software specifically designed to defeat required emissions controls on onroad and nonroad vehicles and engines.

C. Control Stringencies Represented by Cost Threshold ($ per ton) and Corresponding Emission Reduction Potential

1. EGU Emissions Reduction Potential by Cost Threshold

For EGUs, as discussed in section VII.A, the multi-factor test considers increasing levels of uniform control stringency, where each level is represented by cost per ton of emissions reduced, in combination with consideration of total NO_X reduction potential and corresponding air quality improvements. To determine which cost thresholds to use to assess upwind state NO_X mitigation potential, EPA evaluated EGU NO_X control costs that represent the thresholds at which various control technologies are widely available (described previously in section VII.B.1), the use of certain cost thresholds in previous rules to address ozone transport, and cost thresholds incorporated into state requirements to address ozone nonattainment.

EPA began by determining the appropriate range of costs to evaluate. In the CSAPR Update, $1,400 per ton in 2011$ was the EGU NO_X cost threshold relied upon to partially address obligations in time for the 2017 ozone season. This figure represented the lowest marginal cost where EPA expects SCR optimization at all existing SCR controls (including fully idled controls[118]) to be cost-effective. Based on our assessment of EGU NO_X mitigation strategies, this same technology would now have a cost of $1,600 per ton in 2016$.[119] Specifically, the cost of this approach to NO_X reduction is the marginal cost of optimizing existing SCRs at higher levels of NO_X removal than they are currently achieving if their current rate is greater than 0.08 lb/mmBtu. Given that EPA has already determined this technology is cost-effective and reasonable to consider for significant contribution determination in the CSAPR Update (and those determination were not remanded), EPA has not included a representation of mitigation technologies with any lower cost levels in this proposal's analyses in Step 3. (Further, as explained below, such analysis is not necessary for purposes of checking for overcontrol at the selected cost threshold.)

EPA then evaluated EGU NO_X cost thresholds to determine an appropriate upper bound for our assessment. EPA identified $9,600 per ton as an upper bound as it represented the most stringent mitigation technology (SCR retrofit) that EPA identified in its assessment. EPA seeks comment on whether $1,600 per ton is an appropriate minimum and $9,600 per ton is an appropriate maximum uniform cost threshold to evaluate for the purpose of quantifying EGU NO_X reductions to reduce interstate ozone transport for the 2008 ozone NAAQS (Comment C–6).

EPA then determined appropriate EGU NO_X cost thresholds to evaluate within the range of $1,600 per ton to $9,600 per ton and identified two additional thresholds. Table VII.C.1–1 lists the EGU NO_X cost thresholds evaluated and the NO_X reduction strategy or policy used to identify each cost threshold. As described above in Section VII.B, these cost thresholds are informed by our assessment of the costs at which EGU NO_X control strategies are widely available. Evaluating additional cost thresholds in between the four thresholds EPA identifies here would not yield meaningful insights as to NO_X reduction potential. EPA-selected cost thresholds represent the points at which specific control technologies become widely available and thereby where the most significant incremental emission reduction potential is expected. Analyzing costs between these cost thresholds is not expected to reveal significant incremental emission reduction potential that isn't already anticipated at the analyzed cost thresholds.

[116] Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards, 79 FR 23414 (April 28, 2014).

[117] Zawacki et al, 2018. Mobile source contributions to ambient ozone and particulate matter in 2025. Atmospheric Environment. Vol 188, pg 129–141. Available online: *https://doi.org/10.1016/j.atmosenv.2018.04.057*.

[118] EPA had estimated an $800 threshold representing optimizing SCRs for existing SCRs currently in some level of operation. See 81 FR 7540–41. In this action, EPA has combined this level of control into the $1600 control strategy for EGUs.

[119] Note, a portion of the cost increase from $1400 to $1600 is simply adjusting from 2011$ to 2016$, but some is also due to change in material costs.

TABLE VII.C.1–1—EGU NO_X COST THRESHOLDS AND NO_X REDUCTION STRATEGIES

EGU NO_X cost threshold (2016$) [120]	Technology
$1,600 per ton	Fully operating all existing post-combustion SCR controls and combustion control installation or upgrade.
$3,900 per ton	Widespread availability of restarting idled SNCRs.
$5,800 per ton	Widespread availability of new SNCRs.
$9,600 per ton	Widespread availability of new SCRs.

EPA proposes that this range and selection of uniform cost thresholds are appropriate to evaluate potential EGU NO_X reduction obligations to address interstate ozone transport for the 2008 ozone NAAQS. Because these cost thresholds are linked to costs at which EGU NO_X mitigation strategies become widely available in each state, the cost thresholds represent the break points in a marginal cost curve at which the most significant step-changes in EGU NO_X mitigation are expected. EPA seeks comment on these uniform technologies and their representative cost thresholds for the purpose of quantifying EGU NO_X reductions to reduce interstate ozone transport for the 2008 ozone NAAQS (Comment C–7).

The tables below summarize the emission reduction potentials (in absolute ozone season tonnages) from these technologies across the 12-state region. Table VII.C.1–2 focuses on near-term mitigation technologies while Table VII.C.1–3 includes mitigation technologies with extended time frames for implementation.

TABLE VII.C.1–2—EGU OZONE-SEASON EMISSION REDUCTION POTENTIAL—2021

State	Baseline 2021 OS NO_X	Reduction potential (tons) at various representative marginal cost *		
		SCR optimization ($1600 per ton)	SCR optimization + LNB upgrade ($1600 per ton)	SCR/SNCR optimization + LNB upgrade ($3900 per ton)
Illinois	9,688	243	243	602
Indiana	15,856	3,356	3,388	3,821
Kentucky	15,588	1,204	3,652	3,762
Louisiana	15,488	86	617	1,255
Maryland	1,565	43	68	225
Michigan	13,893	1,166	2,126	2,351
New Jersey	1,346	92	92	89
New York	3,187	50	50	149
Ohio	15,832	6,227	6,227	6,350
Pennsylvania	11,570	3,494	3,494	3,779
Virginia	4,592	48	520	663
West Virginia	15,165	1,479	2,352	2,719
Total	123,770	17,489	22,829	25,765

* EPA shows reduction potential from state-of-the-art LNB upgrade as a near-term reduction technology but explains in section VII.B and VII.D that this reduction potential would not be implemented until 2022. Sum of state values may vary slightly from total due to rounding.

TABLE VII.C.1–3—EGU OZONE-SEASON EMISSION REDUCTION POTENTIAL—2025

State	Baseline 2025 OS NO_X	Reduction Potential (tons) at various representative marginal cost levels *			
		SCR optimization + LNB upgrade ($1600 per ton)	SCR/SNCR optimization + LNB upgrade ($3,900 per ton)	SCR/SNCR optimization + LNB upgrade + * SNCR retrofit ($5,800 per ton)	SCR/SNCR optimization + LNB upgrade + * SCR retrofit ($9,600 per ton)
Illinois	8,478	201	540	1,104	1,452
Indiana	12,755	3,308	3,665	3,973	4,490
Kentucky	15,588	3,652	3,762	5,088	6,736
Louisiana	15,488	617	1,255	1,494	2,852
Maryland	1,565	68	225	225	326
Michigan	10,841	1,228	1,439	2,300	3,527
New Jersey	1,346	92	89	89	89
New York	3,169	50	149	149	149
Ohio	15,917	6,240	6,369	6,369	6,791
Pennsylvania	11,570	3,494	3,779	3,922	3,992

[120] The cost assessment for new SNCR is available in the EGU NO_X Mitigation Strategies TSD.

TABLE VII.C.1–3—EGU OZONE-SEASON EMISSION REDUCTION POTENTIAL—2025—Continued

State	Baseline 2025 OS NO_X	Reduction Potential (tons) at various representative marginal cost levels *			
		SCR optimization + LNB upgrade ($1600 per ton)	SCR/SNCR optimization + LNB upgrade ($3,900 per ton)	SCR/SNCR optimization + LNB upgrade + * SNCR retrofit ($5,800 per ton)	SCR/SNCR optimization + LNB upgrade + * SCR retrofit ($9,600 per ton)
Virginia	3,912	517	658	658	890
West Virginia	13,407	1,596	1,960	1,960	3,838
Total	114,035	21,064	23,891	27,332	35,133

* Both tables C.1–2 and C.1–3 include limited generation shifting (reflecting that which would occur at the price level consistent with control operation). It does not factor in generation shifting reduction potential that may be attributable to incremental new builds or incremental retirements. Sum of state values may vary slightly from total due to rounding.

As discussed in section VII.B.1.e, in prior actions, EPA has noted 39–48 months as an appropriate implementation timeframe for regionwide actions when EPA is evaluating multiple installations at multiple locations. The start of the 2024 ozone-season would only allow approximately 36 months from the effective date of this rule for post combustion controls to be regionally installed and operating. The 2025 ozone season represents a period approximately 48 months after EPA anticipates taking final action on this proposal and reflects a more demonstrably possible window for making retrofits on a regional scale. Therefore, EPA proposes that 2025 is the earliest ozone season by which new SNCR or SCR may be installed across multiple EGUs on a regional basis.

Installing new SCR or SNCR controls for EGUs generally involves the following steps: Conducting an engineering review of the facility to determine suitability and project scope; advertising and awarding a procurement contract; obtaining a construction permit; installing the control technology; testing the control technology; and obtaining or modifying an operating permit. These timeframes are intended to accommodate a plant's need to conduct an engineering assessment of the possible NO_X mitigation technologies necessary to then develop and send a bid request to potential suppliers. Control specifications are variable based on individual plant configuration and operating details (*e.g.,* operating temperatures, location restrictions, and ash loads). Before making potential large capital investments, plants need to complete these careful reviews of their system to inform and develop the control design they request. They then need to solicit bids, review bid submissions, and award a procurement contract—all before construction can begin.

Scheduled curtailment, or planned outage, for pollution control installation would also be necessary to complete SCR or SNCR projects on a regional scale. Given that peak demand and rule compliance would both fall in the ozone season, sources would likely need to schedule installation projects for the ''shoulder'' seasons (*i.e.,* the spring and/or fall seasons), when electricity demand is lower than in the summer, reserves are higher, and ozone season compliance requirements are not in effect. If multiple units were under the same timeline to complete the retrofit projects as soon as feasible from an engineering perspective, this could lead to bottlenecks of scheduled outages as each unit attempts to start and finish its installation in roughly the same compressed time period. Thus, any compliance timeframe that would assume installation of new SCR or SNCR controls should be developed to reasonably encompass multiple shoulder seasons to accommodate scheduling of curtailment for control installation purposes and better accommodate the regional nature of the program.[121]

Finally, the time lag observed between the planning phase and in-service date of SCR operations in certain cases also illustrates that site-specific conditions can lead to installation times of four years or longer—even for individual power plants. For instance, SCR projects for units at the Ottumwa power plant (Iowa), Columbia power plant (Wisconsin), and Oakley power plant (California) were all in the planning phase in 2014. By 2016, these projects were under construction with estimated in-service dates of 2018.[122] Further, large-scale projects also illustrate that timelines can extend beyond the general estimate for a single power plant when the project is part of a larger, multifaceted air pollution reduction goal. For instance, the Big Bend power plant in Florida completed a multifaceted project that involved adding SCRs to all four units as well as converting furnaces, over-fire air changes, and making windbox modifications, during which a decade elapsed between the initial planning stages and completion.[123]

EPA notes that differences between these control technologies exist with respect to the potential viability of achieving cost-effective, regional NO_X reductions from EGUs. SCR controls generally achieve greater EGU NO_X reduction efficiency (up to 90 percent) than SNCR controls (25 percent). EPA observes that for the remaining uncontrolled coal fleet in the 12 states, SCRs are, on average, more expensive on a cost per ton basis. However, the analysis in the NO_X Mitigation Strategies Proposed Rule TSD notes that the cost range varies widely for units depending on inlet NO_X rate and capacity factor. Therefore, for some units, it is possible that SCR retrofit costs are lower than SNCR costs on a cost per ton basis. Moreover, there are a host of other market and policy drivers that may lead a specific unit to prefer a

[121] The workforce disruption experienced at the onset of the COVID–19 pandemic has resulted in a backlog of scheduled outages for power plant maintenance. According to Genscape, PJM (a regional transmission organization covering a substantial portion of the EGUs affected by this rule) observed a shortfall of more than a quarter of planned outages for power plant maintenance in the spring 2020 shoulder season. Finn, Pat; Szumloz, Zach; Gordon, Elliot. *Impacts of the Coronavirus on the PJM Power Market, Taking a Closer Look at Demand, Supply, Energy Prices, and Congestion. Genscape, A Wood Mackenzie Business. April 2020.*

[122] 2014 EIA Form 860. Schedule 6. Environmental Control Equipment.

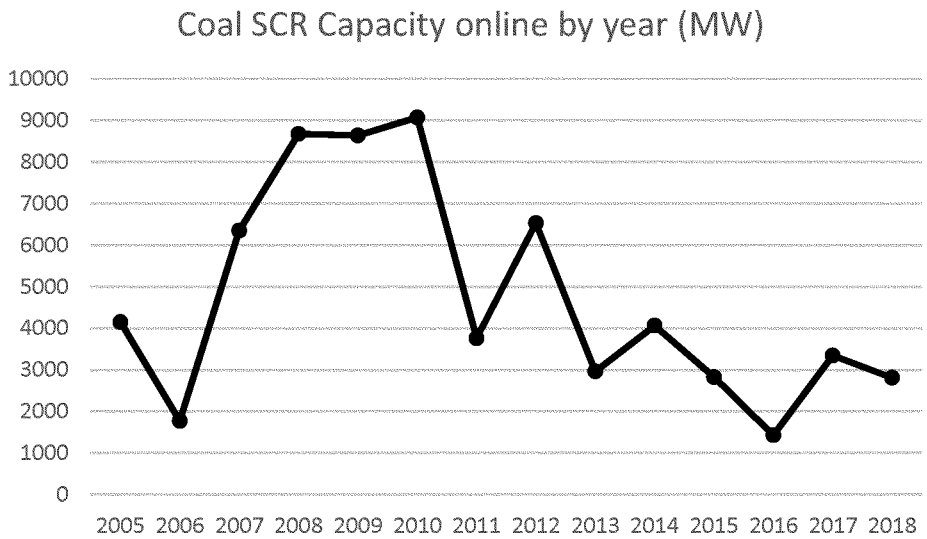
[123] Big Bend's Multi-Unit SCR Retrofit. Power Magazine. March 1, 2010. Available at *http://www.powermag.com/big-bends-multi-unit-scr-retrofit/.*

SCR retrofit over a SNCR retrofit. As a result, EPA believes it is reasonable to allow sufficient time for EGU operators to assess whether either an SNCR or an SCR would be an appropriate post-combustion control technology choice in response to a multi-state emission control program with the flexibility of interstate allowance trading. To allow for that potential determination, EPA is using an SCR-inclusive planning and installation schedule to represent new post-combustion retrofit potential on a regional basis (be it SNCR or SCR as determined by individual EGU owners under our flexible market-based emission trading program).

Furthermore, SNCR installation at an individual source would render later installation of an SCR less cost-effective, because such a unit would have already expended some unrecoverable capital on the less-effective pollution control technology. As a result, it would be counterproductive to assume EGUs should install the less effective SNCR technology to address a short-run air quality concern under an older and less stringent NAAQS when it may later prove necessary to require the more effective SCR technology to address longer-run air quality concerns under a more stringent NAAQS for the same pollutant. Considering these factors, EPA believes it is appropriate to give particular weight to the timeframe required for implementation of SCR across the region as compared to SNCR to allow sources the flexibility to make the most efficient post-combustion control investment. Historically, units have chosen to retrofit with higher performing SCR at a much greater rate than they have chosen SNCR. For SCR, the total time associated with project development is estimated to be up to 39 months for an individual power plant installing controls on more than one boiler. However, more time is needed when considering installation timing for new SCR controls regionally. EPA has previously determined that a minimum of 48 months (four years) is a reasonable time period to allow to complete all necessary steps of SCR projects at EGUs on a regional scale. This timeframe would allow for regional implementation of these controls (*i.e.,* at multiple power plants with multiple boilers) considering the necessary stages of post-combustion control project planning, shepherding of labor and material supply, installation, coordination of outages, testing, and operation.[124]

In addition to its engineering assessment, EPA looked at historical data to validate this 39–48 month installation timeframe. EPA observed over 12 GW of uncontrolled coal capacity in the linked states covered in this rule. For comparison, EPA looked at the last 15 years of data to see if a similar amount of capacity had come online in a shorter time frame. It observed that it had not. Most notably, the CAIR was finalized in March of 2005 covering much of the Eastern U.S. and drove significant SCR retrofit activity, with incentives for early installation and reductions. From this date, 39–48 months would have placed the SCRs online in the mid 2008 to 2009 time frame. The graphic below illustrates an uptick in coal-fired capacity retrofitted with SCRs in response to the rule (Figure VII.D.2). Most of this capacity comes online in 2009 and 2010. Although EPA data on when sources started planning these controls and whether it was driven purely by CAIR or other factors is not perfect, it finds the chart below consistent with its determination that a 39–48 month time frame is reasonable for SCR retrofit possibility on a regional level.

Figure 1 to section VII.C.- SCR Capacity (MW) as a Function of Online Year.



2. Non-EGU Emission Reduction Potential by Cost Threshold

EPA performed a similar analysis of reduction potential for the non-EGU mitigation technologies identified, as discussed in section VII.B.2 of this notice. EPA identified two tranches of controls for non-EGU emissions sources associated with two levels of weighted average cost per ton. EPA's assessment of emission reduction potential from the controls in these tranches reflects significant uncertainty resulting from the current information available to the Agency. Because information for existing controls on non-EGU emissions sources is missing in the 2016 base year

[124] Final Report: Engineering and Economic Factors Affecting the Installation of Control Technologies for Multipollutant Strategies, EPA–600/R–02/073 (Oct. 2002), available at *https://nepis.epa.gov/Adobe/PDF/P1001G0O.pd.*

inventory for some states and incomplete for some sources, EPA went through a process to further verify existing control information and refine the NO_X emission reduction potential estimated by CoST, the CMDb, and the 2023 projected inventory. Because of the data- and research-intensive nature of the process, this verification process focused on a subset of the 12 linked states, where the control measures applied resulted in the greatest potential air quality impact. The steps EPA took, discussed in more detail below, include:

- Considered the air quality impacts by state and focused on upwind states with the largest estimated potential air quality impacts from potential non-EGU emission reductions;
- Assumed that the potential reductions in tranche one were potentially cost-effective because tranche one's weighted average cost of $2,000 per ton is similar to the proposed control stringency for EGUs represented by $1,600 per ton (see section VII.D.1);
- Looked at potential emissions reductions in tranche one that were estimated to cost less than $2,000 per ton; and
- For those potential reductions in tranche one that were estimated to cost less than $2,000 per ton, reviewed online facility permits and industrial trade literature to verify and determine if the estimated emissions reductions may be actual, achievable emissions reductions.

First, to narrow the number of states for which the Agency verified existing control information and refined the NO_X emission reduction estimates the Agency considered the potential air quality impacts by state and focused the assessment on the upwind states with the largest estimated potential air quality impacts: Indiana, New York, Ohio, Pennsylvania, and West Virginia.[125] EPA identified these states using an estimate of 0.02 ppb as a threshold for air quality improvement that may be obtained from reductions from non-EGUs in each state. The Agency is not applying a 0.02 ppb impact threshold as a step in the step 3 multi-factor test. Rather, this threshold value allowed the Agency to better target its efforts toward the potentially effective states for non-EGU NO_X emissions reductions. For additional discussion on the air quality impacts by state, see the section titled *Air Quality Impacts from Potential Non-EGU Emissions Reductions* in the technical memorandum titled *Assessing Non-EGU Emission Reduction Potential* in the docket for this proposed rule.

Next, to narrow the set of emissions sources in those states for which EPA would verify existing control information and refine the NO_X emission reduction estimates, the Agency assumed that the potential reductions in tranche one were potentially relatively cost-effective because tranche one's weighted average cost of $2,000 per ton is similar to the proposed control stringency for EGUs represented by $1,600 per ton (see section VII.D.1).

Next, EPA looked at potential emissions reductions in tranche one that were estimated to cost less than $2,000 per ton. Before refining the emission reduction estimates in tranche one, the total estimated emissions reductions for the non-EGU sources in Indiana, New York, Pennsylvania, and Ohio are 7,556 ozone season tons. The estimated emissions reductions in tranche one in those states that cost less than $2,000 per ton are 6,346 ozone season tons, or 84 percent of the total. Note that no potential emissions reductions at a cost of less than $2,000 per ton were identified in West Virginia because CoST originally estimated control costs for two IC engines in West Virginia inappropriately, and CoST did not identify likely cost-effective controls for any other non-EGU emissions units in the state. EPA removed the two IC engines in West Virginia from further consideration because the corrected potential cost was greater than $2,000 per ton. In reviewing the potential controls in tranche one that were estimated to cost less than $2,000 per ton for Indiana, New York, Pennsylvania, and Ohio, EPA found that these reductions were from SCR applied to glass furnaces and SNCR applied to cement kilns.

Next, to verify the information on the application of these controls and estimated emissions reductions, EPA reviewed facilities' online title V permits and industrial trade literature for the likely cost-effective emissions reductions associated with SCR applied to glass furnaces and SNCR applied to cement kilns. Of the 20 emissions units in Indiana, New York, Pennsylvania, and Ohio included in the cost analysis, source permits identified that 10 units (i) already have controls and monitors (primarily CEMS), (ii) are installing controls and CEMS or consolidating operations in the next few years as a result of recent consent decrees issued as part of EPA's New Source Review Air Enforcement Initiative, (iii) have shut down, or (iv) are planning to shut down by 2023. The results of the online permit review and review of industrial trade literature, summarized in Table VII.C.2–1 below, suggest that approximately 14 percent of the CoST-estimated potential emissions reductions in these four states may be possible to achieve. EPA expects that the controls for glass furnaces and cement kilns would take at least 2 years to install on a sector-wide basis across the 12-state region affected by this proposed rule. Therefore, based on the information available to us at this time, EPA believes that the 2023 ozone season is the earliest ozone season by which these non-EGU controls could likely be installed. For additional details on the review of online permits and industrial trade literature, please see the memorandum titled *Assessing Non-EGU Emission Reduction Potential,* available in the docket for this proposed rule.

TABLE VII.C.2–1—STATUS OF POTENTIAL EMISSIONS REDUCTIONS

	Number of emissions units	OS tons	(Percent of total)
Shutdowns	4	824	13
Lehigh Cement—Kiln Replacements	3	366	6
NEI Discrepancy/Uncertain[126]	1	3,286	51
Already Controlled/Uncertain	5	967	15

[125] There were no potential NO_X emissions reductions from New Jersey because the projected 2023 emissions inventory did not include non-EGU point sources in New Jersey with pre-control NO_X emissions greater than 150 tpy for which the Agency had applicable control measures.

[126] In the memorandum titled *Assessing Non-EGU Emission Reduction Potential,* the section titled *Conclusions of Verification and Review of Controls on Non-EGU Sources in Four States and Potential Emissions Reductions* includes a discussion related to the underlying uncertainty in these estimates of emissions reductions. The sources of uncertainty are related to future emissions estimates, a possible June 2020 unit shut down, and a unit that may already be controlled.

TABLE VII.C.2–1—STATUS OF POTENTIAL EMISSIONS REDUCTIONS—Continued

	Number of emissions units	OS tons	(Percent of total)
Possible Emissions Reductions	7	903	14
TOTAL	20	6,346	

EPA has also previously examined the time necessary to install the controls indicated in the table above (with details on the technology tranches) for different industries. The 2016 CSAPR Update Non-EGU TSD provided preliminary estimates of installation times for a variety of NO_X control technologies applied to a large number of sources in non-EGU industry sectors.[127] For virtually all NO_X controls applied to cement manufacturing and glass manufacturing, information on installation times was not available to provide an estimate, and that the installation time for these controls was ''uncertain.'' There was an exception for SNCR applied to cement kilns; however, the installation time estimate of 42–51 weeks listed in the CSAPR Update Non-EGU TSD does not account for implementation across multiple sources, the time needed to have NO_X monitoring installed, and other steps in the permitting and construction processes.

To improve upon information from the CSAPR Update Non-EGU TSD on installation times for SCR on glass furnaces and SNCR on cement kilns, EPA reviewed information from permitting actions and a consent decree. For two glass manufacturing facilities that installed SCR on glass furnaces, from the time of permit application to the time of SCR operation was approximately 19 months for one facility and is currently at least 20 months for another facility.[128] These installation times do not reflect time needed for pre-construction design and engineering, financing, and factors associated with scaling up construction services for multiple installations at several emissions units. With respect to cement kilns, an April 2013 consent decree between EPA and CEMEX, Inc. required installation of SNCR at a kiln within 450 days, or approximately 15 months, of the effective date of the consent decree. Similarly, this installation time does not reflect time associated with scaling up construction services for multiple control installations at several emissions units.

This information and EPA's general experience indicate that a two-year installation timeframe for a rule requiring installation of new control technologies across a variety of emissions sources in several industry sectors on a regional basis is a relatively fast installation timeframe. A shorter installation timeframe of approximately one year (*i.e.,* in time for the 2022 ozone season) would raise significant challenges for sources, suppliers, contractors, and other economic actors, potentially including customers relying on the products or services supplied by the regulated sources.[129]

Thus, for purposes of this proposed rule, EPA estimates that these controls for glass furnaces and cement kilns would take at least 2 years to install on a sector-wide basis across the 12-state region; therefore, based on the information available, EPA proposes that the 2023 ozone season is the earliest ozone season by which these non-EGU controls could likely be installed.

D. Assessing Cost, EGU and Non-EGU NO_X Reductions, and Air Quality

To determine the emissions that are significantly contributing to nonattainment or interfering with maintenance, EPA applied the multi-factor test to EGUs and non-EGUs separately, considering for each the relationship of cost, available emission reductions, and downwind air quality impacts. Specifically, EPA determined the appropriate level of uniform NO_X control stringency that addresses the impacts of interstate transport on downwind nonattainment or maintenance receptors. EPA also evaluated possible over-control by determining if an upwind state is linked solely to downwind air quality problems that could have been resolved at a lower cost threshold, or if an upwind state could have reduced its emissions below the 1 percent air quality contribution threshold at a lower cost threshold.

1. EGU Assessment

For EGUs, EPA examined the impacts of each EGU cost threshold identified in section VII.C.1 on the air quality at downwind receptors. Specifically, EPA identified the projected air quality improvement relative to the base case, as well as whether the air quality improvements are sufficient to shift the status of receptors from nonattainment to maintenance or from maintenance to clean. Combining these air quality factors, cost, and emission reductions, EPA identified a control strategy for EGUs at a stringency level that maximizes cost-effective emission reductions. This control strategy reflects the optimization of existing SCR controls and installation of state-of-the-art NO_X combustion controls, with an estimated marginal cost of $1,600 per ton. EPA's evaluation also shows that emission budgets reflecting the $1,600 per ton cost threshold do not over-control upwind states' emissions relative to either the downwind air quality problems to which they are linked at step 1 or the 1 percent contribution threshold that triggers further evaluation at step 2 of the 4-step framework for the 2008 ozone NAAQS. To assess downwind air quality impacts for each nonattainment and maintenance receptor identified in section VI.C, EPA evaluated the air quality change at that receptor expected from the progressively more stringent upwind EGU control stringencies that

[127] The CSAPR Update Non-EGU TSD is available on EPA's website at the following link: *https://www.epa.gov/airmarkets/assessment-non-egu-NOx-emission-controls-cost-controls-and-time-compliance-final-tsd.*

[128] Cardinal FG Company submitted a permit application to the Wisconsin Department of Natural Resources (WIDNR) to construct an SCR in December 2017 at a facility in Portage, Wisconsin. The SCR was expected to be ready for testing in mid-July 2019. In addition, Cardinal FG Company submitted a permit application to the WIDNR to construct an SCR in January 2019 at a facility in Menomonie, Wisconsin. The SCR is currently not operational.

[129] We note that in several places, the CAA itself indicates a general congressional expectation that the retrofit of emissions controls onto existing sources across diverse industry sectors and at a regional or national scale may take at least several years. For instance, under CAA section 112(i)(3), Congress allowed for up to three years for compliance with control requirements in national rules for hazardous air pollutants for existing sources. And under CAA section 169A(g)(4), Congress established up to five years for the installation of best available retrofit technology (BART) for over two-dozen source categories. While these provisions also call for installation ''as expeditiously as practicable,'' we note that both of these timeframes are longer than the two-year estimate EPA proposes to use in this rulemaking.

were available for that time period. This assessment provides the downwind ozone improvements for consideration and provides air quality data that is used to evaluate potential over-control.

To assess the air quality impacts of the various control stringencies, EPA evaluated changes resulting from the application of the emissions reductions at the cost thresholds to states that are linked to each receptor as well as the state containing the receptor. By applying the cost threshold to the state containing the receptor, EPA assumes that the downwind state will implement (if it has not already) an emissions control strategy for their sources that is of the same stringency as the upwind control strategy identified here. Consequently, EPA explicitly ensures that it is accounting for the downwind state's fair share (which is a part of the overcontrol evaluation).[130]

For states that were not linked to that receptor, the air quality change at that receptor was evaluated assuming emissions equal to the engineering analytics base case emission level. This method holds each upwind state responsible for its fair share of the specific downwind problems to which it is linked. For states that are not linked to that receptor (even if they are linked to a different receptor), EPA assumes that they are not making emission reductions beyond those in the base case to that receptor. In practice, because these states, by definition, do not impact such receptors above the contribution threshold, the changes in emissions have little to no effect on the non-linked receptor. Furthermore, if EPA were to explicitly consider these reductions within the framework, it would introduce interdependency into the solution for significant contribution. The state-and-receptor-specific definition of significant contribution would devolve into a simultaneous regional action, where particular states would have to either ''go first'' or where non-linked states would shoulder burdens to receptors to which they are not linked while other linked states would do less. In any case, EPA has verified that even if it were to account for non-linked state reductions under the selected control stringency, the changes in concentrations at the receptors are so small that they do not affect the attainment or maintenance status of any receptor.

For this assessment, EPA used an ozone air quality assessment tool (ozone AQAT) to estimate downwind changes in ozone concentrations related to upwind changes in emission levels. EPA used this tool to analyze the years for which downwind nonattainment and maintenance problems persist for the 2008 ozone NAAQS. Under the base case, EPA projects that such air quality problems persist through 2025. Therefore, EPA focused its assessment on the years 2021 through 2025.

This tool is similar to the AQAT tool used in the CSAPR Update to evaluate changes in ozone concentrations. The ozone AQAT uses simplifying assumptions regarding the relationship between each state's change in NO_X emissions and the corresponding change in ozone concentrations at nonattainment and maintenance receptors to which that state is linked. This method is calibrated using two CAMx air quality modeling scenarios that fully account for the non-linear relationship between emissions and air quality associated with atmospheric chemistry. The two CAMx modeling scenarios are the 2016 base year and the 2023 fh1 future year scenarios for the 2021 time period. For the 2024 and 2025 AQAT simulations, the two CAMx modeling scenarios are the 2023 fh1 future year and the 2028 fh1 scenario. See the Ozone Transport Policy Analysis Proposed Rule TSD for additional details.

For each EGU cost threshold, EPA first evaluated the magnitude of the change in ozone concentrations at the nonattainment and maintenance receptors for each relevant year. EPA next evaluated whether the estimated change in concentration would resolve the receptor's nonattainment or maintenance concern by lowering the average or maximum design values below 76 ppb, respectively. For a complete set of estimates, see the Ozone Transport Policy Analysis Proposed Rule TSD or the ozone AQAT excel file.

In 2021, there are two nonattainment receptors and two maintenance receptors (see section VI.C for details). EPA evaluated the air quality improvements at the four receptors at the two EGU cost threshold levels that are available in the near-term (*i.e.,* $1,600 per ton and $3,900 per ton).[131] EPA found that the average air quality improvement at the four receptors relative to the engineering analytics base case was 0.19 ppb at $1,600 per ton and 0.23 ppb at $3,900 per ton (see Table VII.D.1–2). EPA found that the Westport receptor (090019003) remains nonattainment at all cost levels, the Stratford receptor (090013007) switches from nonattainment to maintenance at $1,600 per ton (*i.e.,* its average DV becomes clean but its maximum DV remains above the NAAQS), while the Houston receptor (482010024) remains maintenance at all levels. Lastly, the New Haven receptor has all nonattainment and maintenance resolved in the engineering analytics base case. For more information about how this assessment was performed and the results of the analysis for each receptor, refer to the Ozone Transport Policy Analysis Proposed Rule TSD and to the Ozone AQAT included in the docket.

TABLE VII.D.1–1—AIR QUALITY AT THE FOUR RECEPTORS IN 2021 AT VARIOUS COST THRESHOLDS

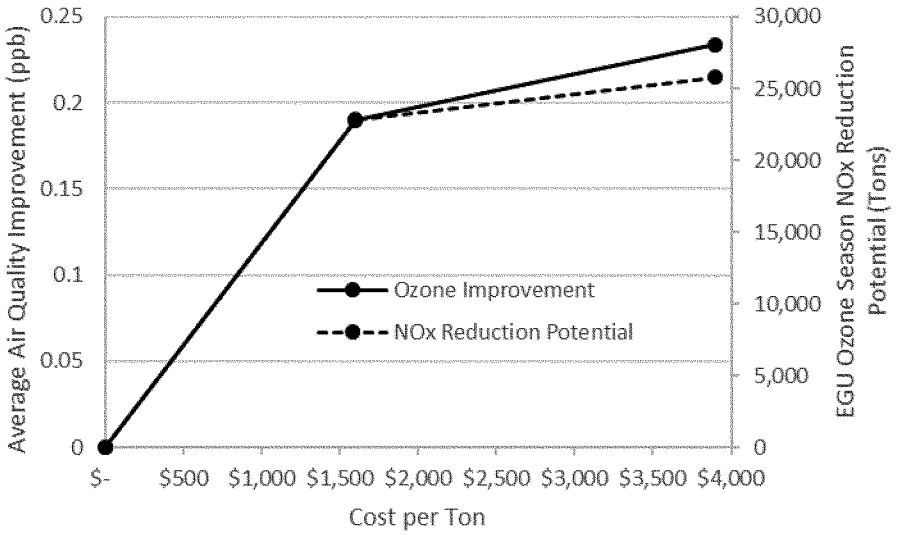
Monitor ID No.	State	County	Baseline	$1,600/ton	$3,900/ton	Baseline	$1,600/ton	$3,900/ton
			Average DV (ppb)	Average DV (ppb)	Average DV (ppb)	Max DV (ppb)	Max DV (ppb)	Max DV (ppb)
90013007	Connecticut	Fairfield	76.10	75.88	75.86	77.02	76.80	76.78
90019003	Connecticut	Fairfield	78.26	78.08	78.06	78.56	78.39	78.37
90099002	Connecticut	New Haven	73.56	73.32	73.29	75.72	75.47	75.44
482010024	Texas	Harris	75.61	75.49	75.39	77.25	77.12	77.02
Average AQ Improvement Relative to Base (ppb)			0.00	0.19	0.23			

[130] This step is irrelevant in the analysis for the Connecticut receptors because that state shows no EGU reduction potential from the EGU control optimization or retrofit technologies identified given its already low-emitting fleet.

[131] The $1,600 per ton cost threshold level includes full implementation of mitigation technologies available at that level (SCR optimization and state-of-the-art combustion controls).

Figure 1 illustrates the air quality improvement relative to the marginal cost per control technology for the controls associated with the near-term cost thresholds of $1,600 per ton and $3,900 per ton. EPA combines costs, EGU NO_X reductions, and corresponding improvements in downwind ozone concentrations, which results in a ''knee-in-the-curve'' graph, with the ''knee'' at a point where emission budgets reflect a control stringency with an estimated marginal cost of $1,600 per ton. This level of stringency in emission budgets represents the level at which incremental EGU NO_X reduction potential and corresponding downwind ozone air quality improvements are maximized with respect to marginal cost. That is, the ratio of emission reductions to marginal cost and the ratio of ozone improvements to marginal cost are maximized relative to the other emission budget levels evaluated. The more stringent emission budget levels (*e.g.,* emission budgets reflecting $3,900 per ton or greater) yield fewer additional emission reductions and fewer air quality improvements relative to the increase in control costs. This evaluation shows that EGU NO_X reductions are available at reasonable cost and that these reductions can provide improvements in downwind ozone concentrations at the identified nonattainment and maintenance receptors.

Figure 1 to section VII.D.1 - EGU Ozone Season NO_X Reduction Potential in 12 Linked States and Corresponding Total Reductions in Downwind Ozone Concentration at Nonattainment and Maintenance Receptors for each Cost Threshold Level Evaluated (2021/2022)*



*Note – this figure reflects full implementation of $1600 per ton (SCR optimization + state-of-the-art combustion control upgrade)

EPA proposes that the $1,600 per ton level control strategy, associated with optimizing existing SCRs and ensuring that state of the art combustion controls have been fully installed or upgraded, is a relatively highly cost-effective level of control (reflected as being the ''knee-in-the-curve''), and should therefore be required to address significant contribution in the 12 linked states. EPA observes this $1,600 per ton level of stringency results in a substantial number of emissions reductions totaling nearly 23,000 tons (19 percent of the baseline level), resulting in all downwind air quality problems for the 2008 ozone NAAQS being resolved after 2024 (one year earlier than the base case). There are also projected changes in receptor status (from projected nonattainment to maintenance-only) for the Stratford and Westport receptors (the first in 2021, the second in 2024). In addition, the Houston receptor changes from maintenance to attainment in 2023. In 2021, the average level of improvement in ozone concentrations at all four of the receptors is 0.19 ppb.

By comparison, the next, more stringent mitigation technology available in 2021 (*i.e.,* SNCR optimization at $3,900 per ton) yields incremental emission reductions of approximately only 3,000 tons. This has a much smaller average air quality improvement of just 0.04 ppb in 2021. Further, this smaller benefit comes at a substantial increase in marginal costs. Moreover, analysis using the AQAT tool suggests this strategy had no further impact on receptors' status. EPA examined the total number of SNCR-controlled coal units in the 12 linked states. A small portion of the coal fleet had this technology in place (14 percent), and of that small portion, the majority of the units with these SNCR controls had emission rates of 0.13 lb/mmBtu or less (many operating less than 0.1 lb/mmBtu), suggesting they were already optimizing their SNCRs. Given the small portion of the coal fleet covered by this technology in the 12 linked states, combined with the

relatively low emission rate on average suggesting ongoing control operation, EPA observed few additional reductions. Given the cost, available reductions, and corresponding air quality improvement, EPA proposes to determine that the potential emission reductions associated with a control strategy of optimizing existing SNCR are not required to eliminate significant contribution from the 12 linked states under the 2008 ozone NAAQS.

Controls associated with the above strategies are implementable by the 2021 ozone season (or in the case of upgraded or new combustion controls, by the 2022 ozone season; see the discussion in section VII.C and in the NO_X Mitigation Strategies TSD for details). Thus, as to the 2021 and 2022 ozone seasons these are the only control strategies for EGUs that EPA is assessing for this timeframe because they are the only ones that are possible. *See Wisconsin,* 938 F.3d at 320.

As discussed above in Section VII.C, EPA estimates that the time necessary to install new SNCR or new SCR controls (represented by $5,800 per ton and $9,600 per ton) on a regional basis across multiple EGUs is approximately 39 to 48 months. While a single new SNCR may be installed within 16 months, for the reasons explained in Section VII.C, a time frame that encompasses the ability for a unit to make a unit-specific choice of what post-combustion control (SCR or SNCR) is best for its configuration and future operating plans is appropriate. Therefore, the timing estimate for SNCR and SCR is considered together and the 39–48 month time frame for SCR installation is the most appropriate time period to use for assessing post-combustion controls. Assuming a final rule in the spring of 2021, this means that these controls could not be operational prior to the 2024 ozone-season, and therefore the reduction potential is not available until the 2025 ozone season. According to EPA's air quality assessment, there are no remaining air quality receptors in 2025 assuming a $1,600 per ton control strategy for EGUs is already in place in the 12 linked states. Therefore, it is not necessary to require emission controls that can only be operational at a point in time when EPA's projections demonstrate there is no remaining interstate transport problem.

EPA is requesting comment on this proposal's determination that new post-combustion controls (SCR or SNCR) are not possible to implement on a regional basis by the start of the 2024 ozone season (Comment C–8). In the event that updated analysis, either via public comments or other information, shows that post-combustion controls may be possible across multiple EGUs on a regional basis before the 2024 ozone season, EPA requests comment on whether the emission reduction potential of new post-combustion controls (SCR or SNCR) at EGUs, on a regional basis, may constitute significant contribution to nonattainment and/or interference with maintenance (Comment C–9). EPA anticipates that such analysis would be applied to the foreseeable circumstances of downwind receptors under the 2008 ozone NAAQS and would require assessment under the multi-factor test set forth in this section (as applied to other emission control strategies). This includes an analysis of cost, emission reduction potential, and downwind air quality impacts. EPA also believes that the degree of nonattainment or maintenance problem anticipated at downwind receptors at the time such controls are purported possible would be a relevant consideration.

2. Non-EGU Assessment

The Agency used CoST and the 2023 projected inventory to identify uncontrolled emissions sources or units and applied controls to emissions units with 150 tpy or more of pre-control NO_X emissions, which is an emissions threshold comparable to 25 MW for EGUs. EPA categorized the CoST results by the control technologies, calculated a weighted average cost per ton (in 2016$) for emissions reductions associated with each technology, and identified two tranches of potential reductions based on estimated cost effectiveness (for details see Section VII.B.2). EPA took a series of steps to further verify and refine the NO_X emission reduction potential estimated by CoST, the CMDb, and the 2023 projected inventory and found that the cost-effective emissions reductions in tranche one were from SCR applied to glass furnaces and SNCR applied to cement kilns. These controls could likely take 2–4 years to install; therefore, at the time of this proposal, EPA does not believe these non-EGU controls can be installed prior to the 2023 ozone season (for details see Section VII.C.2).

Using 2023 as the potential earliest date by which controls for glass furnaces and cement kilns can be installed, EPA assessed whether these emission reduction strategies should be required at Step 3 under its multi-factor test. First, the Agency extended the findings for glass furnaces and cement kilns from the five states for which the Agency refined the data—Pennsylvania, New York, Ohio, Indiana, and West Virginia—to the five other states linked to an air quality receptor in 2023—Michigan, Illinois, Kentucky, Virginia, and Maryland.[132] For the other five states, because the Agency was not able to verify the existing control information or refine the emission reduction potential through the online permit and trade literature review in the time available, the Agency conservatively assumed that all of the CoST-estimated emissions reductions were real emissions reductions. Combining the results from the refined assessment for five states with the assumption that all of the reductions from the other five states are real emissions reductions, EPA estimated that across the 11 states linked to the remaining receptor in Connecticut in 2023 (Westport), the available emissions reductions from tranche one at less than $2,000 per ton are 1,567 ozone season tons.[133] Using AQAT, EPA assessed whether this level of emissions reductions would have a meaningful effect on the Connecticut receptor. EPA found that the total improvement in air quality from these emissions reductions is 0.03 ppb. This potential air quality improvement is an order of magnitude less than the air quality improvement EPA expects to obtain from the comparable $1,600 per ton control strategy for EGUs in 2023, which is estimated to improve air quality at the remaining Connecticut receptor by 0.30 ppb. Based on this assessment, then the Agency proposes under the multi-factor test that even the potentially most cost-effective reductions from non-EGU sources (*i.e.,* those below $2,000 per ton in tranche one) do not rise to the level of ''significance'' that would justify mandating them under the good neighbor provision for the 2008 ozone NAAQS. As discussed in more detail in its request for comments below, because of EPA's relatively incomplete and

[132] Louisiana is excluded from this analysis because the Houston, Texas receptor to which it is linked is projected to be neither a nonattainment nor a maintenance receptor by the 2023 ozone season based on the CAMx modeling with IPM emissions. In addition, New Jersey is not included because there were no potential NO_X emissions reductions from New Jersey because the projected 2023 emissions inventory did not include non-EGU point sources in New Jersey with pre-control NO_X emissions greater than 150 tpy for which the Agency had applicable control measures.

[133] The 1,567 ozone season tons is a total of 903 tons from Table VII.C.2.1 and 664 ozone season tons from the 5 states (Michigan, Illinois, Kentucky, Virginia, and Maryland) for which we did not conduct an online permit review and verify the estimated emissions reductions. The estimated 664 tons can be found in the Excel workbook titled *CoST Control Strategy—Max Reduction $10k 150 tpy cutoff 12 States updated Modeling—No Replace—07-23-2020.xlsx* in the *SCR and SNCR Summary* worksheet.

uncertain datasets on which it based this proposed analysis, EPA encourages stakeholder comments on the analysis and proposed conclusion with respect to the tranche one non-EGU control strategies (Comment C–10).

Turning to tranche two, EPA believes the amount of time needed to install controls or retrofit the 111 non-EGU emissions units identified in tranche two likely extends beyond the 2021 Serious area attainment date; therefore, similar to tranche one, EPA assumes the installation times are no earlier than the 2023 ozone season. In tranche two, the weighted average cost of the estimated emissions reductions from non-EGU emissions sources ranges from $5,000 to $6,600 per ton. In the 11 linked states, the Agency identified approximately 11,100 tons of potential ozone season emissions reductions by applying layered combustion, NSCR (non-selective catalytic reduction) or layered combustion, and ultra-low NO_X burners in combination with SCR to 111 emissions units in the oil and gas industry and several manufacturing industries. EPA did not further verify and refine these estimated emissions reductions and believes the estimate of available emission reductions could be lower because the inventory can be missing information on controls on existing emissions sources and CoST may be applying controls to already controlled sources. In Section VII.D.2.a below, EPA seeks comment on the feasibility of further controlling NO_X from IC engines and large ICI boilers, including optimizing combustion and installing ultra-low NO_X burners.

EPA's assessment is that, with the proposed control strategy for EGUs in place (see section VII.D.1.), there will no longer be any downwind receptors in 2025 with respect to the 2008 ozone NAAQS. Focusing then on whether there are any non-EGU NO_X emissions reductions available to address significant contribution under the Step 3 multi-factor test in either the 2023 or 2024 ozone seasons, based on its assessment EPA proposes to conclude that any such potentially available reductions would not be justified. EPA's proposed assessment is that there is a relatively smaller quantity of NO_X reductions that may be available from the non-EGU control strategies in tranches one and two in these years, across the 11 states linked to the remaining receptor. These control strategies are estimated to have a limited impact on further improving air quality at this receptor. As shown in the Ozone Policy Analysis TSD, the incremental effects of emission reductions from non-EGUs do not affect the status of any of the four receptors in any of the relevant years compared with the $1,600 per ton EGU policy scenario. For more information, refer to the Ozone Transport Policy Analysis Proposed Rule TSD. EPA therefore proposes to conclude that no emission reductions from non-EGU sources are necessary to eliminate significant contribution under the good neighbor provision for the 2008 ozone NAAQS.

a. Request for Comment on Non-EGU Control Strategies and Measures

Recognizing the limitations and uncertainties in the existing data on which EPA bases this proposal, EPA is requesting comment to assist in substantiating whether this assessment is fully supportable based on additional information and analyses not currently available to the Agency (Comment C–11). To develop a more complete record, EPA requests comment on a number of questions related to specific control strategies the Agency evaluated, and in particular seeks feedback and data from stakeholders with relevant expertise or knowledge. Should such additional information and analyses show that emissions reductions from non-EGU sources in the linked upwind states would be more cost-effective than what is included in EPA's current assessment, available for installation earlier than EPA estimates, or more impactful on downwind air quality than EPA's current information suggests, then the Agency remains open to the possibility of finalizing a rule requiring such controls as may be justified under the Step 3 multi-factor test.

EPA understands that the methodology employed was one approach to assessing emission reduction potential from non-EGU emissions sources or units and to determining an appropriate stringency level for non-EGU sources. In the time available, the Agency was not able to employ another methodology or conduct another assessment of other potential non-EGU control strategies or measures and verify the estimated emissions reductions in the same manner as it did for some of the tranche one states.

As indicated in Section VII.C.2 above, information about existing controls on non-EGU emissions sources in the inventory was missing for some states and incomplete for some sources. The approach EPA used in this proposal was to assess emission reduction potential using CoST and the projected 2023 inventory to identify emissions units that were uncontrolled. Given that EPA's assessment of any other NO_X control strategies would also rely on CoST, the CMDb, and the inventory to identify emissions units that were uncontrolled and to assess emission reduction potential from non-EGU sources, the Agency believes such an assessment would likely lead to a similar conclusion that estimated emission reduction potential is uncertain.

As such, for this and future regulatory efforts, to improve the underlying data used in an assessment of emission reduction potential from non-EGU sources, EPA requests comments on: (i) The existing assessment of emission reduction potential from glass furnaces and cement kilns (Comment C–12); (ii) emission reduction potential from other control strategies or measures on a variety of emissions sources in several industry sectors (Comment C–13); and (iii) the feasibility of further controlling NO_X from IC engines and large ICI boilers, including optimizing combustion and installing ultra-low NO_X burners (Comment C–14). The three sections below introduce the areas for comment and describe workbooks generated by CoST, the CMDb, and the 2023 projected inventory with the underlying data to review for comment.

First, EPA requests comment on the aspects of the assessment presented above of emission reduction potential from the glass and cement manufacturing sectors (Comment C–15). To help inform review and comments, please see the following Excel workbooks available in the docket and referenced in the memorandum titled *Assessing Non-EGU Emission Reduction Potential:* (i) For a summary of the CoST run results *CoST Control Strategy—Max Reduction $10k 150 tpy cutoff 12 States Updated Modeling—No Replace—07–23–2020,* and (ii) for summaries of emissions reductions by control technologies, *Control Summary—Max Reduction $10k 150 tpy cutoff 12 States Updated Modeling—No Replace—05–18–2020.* Note that the *CoST Control Strategy—Max Reduction $10k 150 tpy cutoff 12 States Updated Modeling—No Replace—07–23–2020* Excel workbook includes a READ ME worksheet that provides details on the parameters used for the CoST run.

Specifically, EPA is soliciting comment on the following:

- Are applying SCR to uncontrolled or under-controlled glass furnaces and SNCR to uncontrolled or under-controlled cement kilns in the linked states feasible approaches to achieve cost-effective emissions reductions? If not, what types of cost-effective controls can be applied to these sources?
- Does EPA have the right and most up to date information on emissions and

existing control technologies for the units included in this assessment? If not, what is the correct and more up to date information?

- After looking at the underlying CoST run results, are the cost estimates accurate and reasonable? If not, what are more accurate cost estimates?
- What is the earliest possible installation time for SCR on glass furnaces?
- What is the earliest possible installation time for SNCR on cement kilns?
- For the non-EGU facilities without any emissions monitors, what would CEMS cost to install and operate? How long would CEMS take to program and install?

In addition to the assessment of emission reduction potential from the glass and cement manufacturing sectors, for the 12 linked states EPA attempted to summarize all potential control measures for emissions units with 150 tpy or more pre-control NO_X emissions in 2023 in several industry sectors. This information illustrates that there are many potential approaches to assessing emissions reductions from non-EGU emissions sources or units. EPA used the Least Cost Control Measure worksheet from a CoST run.[134] By state for the 12 linked states and then by facility, this information is summarized in the Excel workbook titled *CoST Control Possibilities $10k 150 tpy cutoff 12 States Updated Modeling—06–30–2020,* also available in the docket and referenced in the memorandum titled *Assessing Non-EGU Emission Reduction Potential.*

Second, specifically EPA requests comment (Comment C–16) on the following:

- Other than glass and cement manufacturing, are there other sectors or sources that could achieve potentially cost-effective emissions reductions? What are those sectors or sources? What control technologies achieve the reductions? What are cost estimates and installation times for those control technologies?
- Are there other sectors where cost effective emission reductions could be obtained by, in lieu of installing controls, replacing older, higher emitting equipment with newer equipment?
- Are there sectors or sources where cost effective emission reductions could be obtained by switching from coal-fired units to natural gas-fired units?
- For non-EGU sources without emissions monitors, what would CEMS cost to install and operate? How long would CEMS take to program and install? Are monitoring techniques other than CEMS, such as predictive emissions monitoring systems (PEMS), sufficient for certain non-EGU facilities that would not be brought into a trading program? If so, for what types of non-EGU facilities, and under what circumstances, would PEMS be sufficient? What would be the cost to install and operate monitoring techniques other than CEMS?

Third, in the workbook titled *CoST Control Possibilities $10k 150 tpy cutoff 12 States Updated Modeling—06–30–2020* EPA included two worksheets with information on controls for ICI boilers and IC engines: (i) *Boilers—ULNB* and (ii) *IC Engines—LEC.* For the 12 linked states, EPA summarized CoST's application of ultra-low NO_X burners (ULNB) on ICI boilers and low emission combustion (LEC) on IC engines. Assuming that the estimated emissions reductions from the application of these controls are real and cost-effective, there could be approximately 5,000 ozone season tons of emissions reductions from 52 ICI boilers and 8,000 ozone season tons of emissions reductions from 69 IC engines. This information is summarized in Table VII.D.2–1 below.

TABLE VII.D.2–1—SUMMARY OF POTENTIAL EMISSIONS REDUCTIONS FROM ULNB ON ICI BOILERS AND LEC ON IC ENGINES

	ICI boilers	IC engines
Number of Emissions Units in the 12 Linked States	52	69
2023 Projected Total NO_X Emissions in the 12 Linked States (ozone season tons, reflects any existing control before ULNB or LEC were applied)	6,779	9,260
2023 Projected Total NO_X Emissions in the 12 Linked States after Applying ULNB to Boilers (ozone season tons)	1,695	.....
2023 Projected Total NO_X Emissions in the 12 Linked States after Applying LEC to IC Engines (ozone season tons)	.....	1,231
Number of Units with No Known Existing Control	51	57

EPA is requesting comments on the feasibility of further controlling NO_X from large ICI boilers and IC engines, including optimizing combustion and installing low NO_X burners (Comment C–17). As mentioned in the discussion above on emissions reductions from the EGU sector, EPA understands that it is generally possible to install LNB on EGU boilers fairly quickly and that these burners can significantly reduce NO_X emissions. EPA notes that in the original interstate transport rule, the NO_X SIP call, the Agency concluded that controls on large, non-EGU boilers and turbines were cost effective and allowed states to include those emissions sources in their budgets as a means of providing additional opportunities to reduce state-wide NO_X emissions in a cost-effective manner.[135] Therefore, the Agency solicits comment on whether EPA should require that large non-EGU boilers and turbines—as defined in the NO_X SIP call as boilers and turbines with heat inputs greater than 250 Million British Thermal Units (mmBtu) per hour or with NO_X emissions greater than 1 ton per ozone season day[136]—within the 12 states employ controls that achieve emissions reductions greater than or equal to what can be achieved through the installation of low NO_X burners (Comment C–18).

Also, five of the 12 states that are subject to this rulemaking are also within the Ozone Transport Region (OTR)—Maryland, New Jersey, New York, Pennsylvania, and Virginia. As member states of the OTR, these five states are required to implement reasonably available control technology

[134] The Least Cost Control Measure worksheet is a table of all possible emissions source-control measure pairings (for sources and measures that meet the respective criteria specified for a control strategy), each of which contains information about the cost and emissions reductions achieved if the control measure were to be applied to the emissions source.

[135] *See* 63 FR 57402 (October 27, 1998).

[136] Note that the 250 mmBTU/hr for ICI boilers and turbines is equivalent to 25 MW heat input for an EGU. The tonnage per source was 1 ton per ozone season day, and because controls on non-EGUs operate year-round, the emissions would be 365 tons per year.

(RACT) state-wide on major sources of emissions.[137] It is likely that NO_X controls, such as low NO_X burners, are already in wide-spread use within these five states. However, such controls may not be as widely used in states outside of the OTR. Therefore, the Agency also solicits comment on (i) the magnitude of the emissions reductions that could be achieved by requiring that large non-EGU boilers and turbines install controls that achieve emissions reductions greater than or equal to what could be achieved through the installation of low NO_X burners, (ii) the prevalence of these or better NO_X controls already in place on this equipment in these 12 states, and (iii) the time it typically takes to install such controls (Comment C–19).

In addition to the above, EPA is requesting comments on the following:

- How effective are ultra-low NO_X burners or low NO_X burners in controlling NO_X emissions from ICI boilers?
- Are they generally considered part of the process or add-on controls? If they are part of a process, how could EPA estimate the cost associated with changing the process to accommodate ultra-low NO_X burners and low NO_X burners?
- What are the costs (capital and annual) for these as add-on control technologies on ICI boilers?
- What are the earliest possible installation times for these control technologies on ICI boilers? EPA believes it is generally possible to install low NO_X burners on EGU boilers relatively quickly and that low NO_X burners can significantly reduce NO_X emissions. EPA solicits comment on whether this is also true for large non-EGU ICI boilers.
- Do some of the emissions units included in the summary already have either add-on controls or controls that are part of a process? If so, what control is on the unit and what is the control device (or removal) efficiency?
- Natural gas compressor stations are the largest NO_X-emitting non-EGU sector[138] affecting the 12 states that are the subject of this proposal, and many of these facilities are powered by decades-old, uncontrolled IC engines. Should emissions reductions be sought from the IC engines at these stations, either through installing controls, upgrading equipment, or other means?
- How effective is low emission combustion in controlling NO_X from IC engines?
- What is the cost (capital and annual) for low emission combustion on IC engines?
- What is the earliest possible installation time for low emission combustion on IC engines? In lieu of installing controls, is replacing older, higher emitting equipment with newer equipment a cost-effective way to reduce emissions from IC engines?
- Do some of the emissions units included in the summary already have either add-on controls or controls that are part of a process? If so, what control is on the unit and what is the control device (or removal) efficiency?

EPA welcomes comments providing data and information on all of the above requests (Comment C–20). The Agency encourages stakeholders with particular expertise, such as source owners and operators, state agencies, trade associations, and knowledgeable non-governmental organizations, to evaluate the information available in the docket and presented above and provide updates, corrections, and other information as may assist in improving EPA's ability to more accurately assess non-EGU emission control strategies relevant to addressing interstate ozone transport.

3. Overcontrol Analysis

As part of the air quality analysis using the Ozone AQAT, EPA evaluated potential over-control with respect to whether (1) the expected ozone improvements would be greater than necessary to resolve the downwind ozone pollution problem (*i.e.,* beyond what is necessary to resolve all nonattainment and maintenance problems to which an upwind state is linked) or (2) the expected ozone improvements would reduce the upwind state's ozone contributions below the screening threshold (*i.e.,* 1 percent of the NAAQS; 0.75 ppb).

In *EME Homer City,* the Supreme Court held that EPA cannot ''require[] an upwind State to reduce emissions by more than the amount necessary to achieve attainment in every downwind State to which it is linked.'' 572 U.S. at 521. On remand from the Supreme Court, the D.C. Circuit held that this means that EPA might overstep its authority ''when those downwind locations would achieve attainment even if less stringent emissions limits were imposed on the upwind States linked to those locations.'' *EME Homer City II,* 795 F.3d at 127. The D.C. Circuit qualified this statement by noting that this ''does not mean that every such upwind State would then be entitled to less stringent emission limits. Some of those upwind States may still be subject to the more stringent emissions limits so as not to cause other downwind locations to which those States are linked to fall into nonattainment.'' *Id.* at 14–15. As the Supreme Court explained, ''while EPA has a statutory duty to avoid over-control, the Agency also has a statutory obligation to avoid 'under-control,' *i.e.,* to maximize achievement of attainment downwind.'' 572 U.S. at 523. The Court noted that ''a degree of imprecision is inevitable in tackling the problem of interstate air pollution'' and that incidental over-control may be unavoidable. *Id.* ''Required to balance the possibilities of under-control and over-control, EPA must have leeway in fulfilling its statutory mandate.'' *Id.*[139]

Consistent with these instructions from the Supreme Court and the D.C. Circuit, EPA first evaluated whether reductions resulting from the proposed $1,600 per ton emission budgets for EGUs in 2021 and 2022 can be anticipated to resolve any downwind nonattainment or maintenance problems. This assessment shows that the emission budgets reflecting $1,600 per ton would change the status of one of the two nonattainment receptors (first shifting the Stratford monitor to a maintenance-only receptor in 2021 and then shifting that monitor to attainment in 2022). However, no other nonattainment or maintenance problems would be resolved in 2021 or 2022. EPA's assessment shows that none of the 11 states are solely linked to the Stratford receptor that is resolved at the $1,600 per ton level of control stringency in 2022.

Reductions resulting from the $1,600 per ton emission budgets for EGUs would shift the Houston receptor in Harris County, Texas, from maintenance to attainment in 2023. These emission reductions would also shift the last remaining nonattainment receptor (the Westport receptor in Fairfield, Connecticut) to a maintenance-only receptor in 2024. No nonattainment or maintenance receptors would remain after 2024.

Next, EPA evaluated the potential for over-control with respect to the 1 percent of the NAAQS threshold applied in this proposed rulemaking at

[137] One exception to the requirement of state-wide RACT within the OTR is for Virginia. Only the Northeast portion of the state is included within the OTR and only facilities within that portion of the state are subject to RACT.

[138] Based on data from the 2017 NEI database.

[139] Although the Court described over-control as going beyond what is needed to address ''nonattainment'' problems, EPA interprets this holding as not impacting its approach to defining and addressing both nonattainment and maintenance receptors. In particular, EPA continues to interpret the Good Neighbor provision as requiring it to give independent effect to the ''interfere with maintenance'' prong. *Accord Wisconsin,* 938 F.3d at 325–27.

step 2 of the good neighbor framework for the $1,600 per ton cost threshold level for each year downwind nonattainment and maintenance problems persist (*i.e.,* 2021 through 2024). Specifically, EPA evaluated whether the emission levels would reduce upwind EGU emissions to a level where the contribution from any of the 12 upwind states would be below the 1 percent threshold that linked the upwind state to the downwind receptors. EPA finds that under the $1,600 per ton EGU cost threshold level for 2021 to 2024 emission levels, all 12 states that contributed greater than or equal to the 1 percent threshold in the base case continued to contribute greater than or equal to 1 percent of the NAAQS to at least one remaining downwind nonattainment or maintenance receptor for as long as that receptor remained in nonattainment or maintenance. For more information about this assessment, refer to the Ozone Transport Policy Analysis Proposed Rule TSD and the Ozone AQAT.

Since emission reductions resulting from the proposed $1,600 per ton emission budgets for EGUs are not projected to result in the expected ozone improvements (1) being greater than necessary to resolve the downwind ozone pollution problem (*i.e.,* beyond what is necessary to resolve all nonattainment and maintenance problems to which an upwind state is linked) or (2) reducing the upwind state's ozone contributions below the screening threshold (*i.e.,* 1 percent of the NAAQS; 0.75 ppb), EPA concludes that the $1,600 control strategy does not result in overcontrol.

Based on the multi-factor test applied to both EGU and non-EGU sources and subsequent assessment of overcontrol, EPA proposes to determine that the emission reductions associated with the $1,600 per ton control stringency for EGUs constitute elimination of significant contribution from the 12 linked upwind states. Therefore, as discussed in section VIII, EPA proposes to establish emission budgets for EGUs in the 12 linked states that reflect the remaining allowable emissions after the emissions reductions associated with the $1,600 per ton control stringency have been achieved.

VIII. Implementation of Emissions Reductions

A. Regulatory Requirements for EGUs

The CSAPR established a NO_X ozone season trading program for states determined in that rulemaking to have good neighbor obligations with respect to the 1997 ozone NAAQS. The CSAPR Update established a new NO_X ozone season trading program for 22 states determined to have good neighbor obligations with respect to the 2008 ozone NAAQS—the CSAPR NO_X Ozone Season Group 2 Trading Program—and renamed the NO_X ozone season trading program established in the CSAPR, which now covers only Georgia, the CSAPR NO_X Ozone Season Group 1 Trading Program.[140] Each of these NO_X ozone season trading programs established state-level budgets for EGUs and allowed affected sources within each state to use, trade, or bank allowances within the same trading group for compliance. In the CSAPR NO_X Ozone Season Group 1 and Group 2 trading programs, sources are required to retire one Group 1 or Group 2 allowance, respectively, for each ton of NO_X emitted during a given ozone season. EPA is proposing to use the same regional trading approach, with modifications to reflect updated budgets, trading groups, and certain additional revisions, as the compliance remedy implemented through the FIPs to address interstate transport for the states having further good neighbor obligations with respect to the 2008 ozone NAAQS in this rule.

Of the 22 states currently covered by the CSAPR NO_X Ozone Season Group 2 Trading Program, EPA is proposing to establish revised budgets for 12 states, as explained below. Therefore, EPA is proposing the creation of an additional geographic group and trading program comprised of these 12 upwind states with remaining linkages to downwind air quality problems in 2021. This new group, Group 3, will be covered by a new CSAPR NOx Ozone Season Group 3 Trading Program. Aside from the removal of the 12 covered states from the current Group 2 program, this proposal leaves unchanged the budget stringency and geography of the existing CSAPR NO_X Ozone Season Group 1 and Group 2 trading programs.

EPA is proposing to use the existing CSAPR NO_X ozone season allowance trading system framework, established in the CSAPR for Group 1 and used again in the CSAPR Update for Group 2, to implement the emission reductions identified and quantified in the FIPs for this proposal. The new Group 3 trading program is proposed to be codified at 40 CFR part 97, subpart GGGGG. As with the existing CSAPR trading programs, emissions monitoring and reporting would be performed according to the provisions of 40 CFR part 75, and decisions of the Administrator under the program would be subject to the administrative appeal procedures in 40 CFR part 78.

B. Quantifying State Emissions Budgets

EPA is proposing to quantify state emission budgets consistent with the approach used in the CSAPR Update. However, given *Wisconsin's* direction to implement a full remedy, EPA must now address upwind emission reduction potential beyond the initial year for which it is establishing emission budgets. Whereas in the partial-remedy context of the CSAPR Update, EPA only established budgets based on its assessment of the 2017 analytic year and noted it would revisit future years at a later date, in this action EPA is simultaneously looking at budgets for all relevant future years to comply with the full-remedy directive. Consequently, for the Group 3 states EPA is proposing to quantify specific budgets in each year to ensure that EGUs continue to be incentivized to implement the full extent of EPA's selected control strategy while nonattainment and maintenance concerns at the linked downwind receptors remain unresolved. In effect, by doing this, EPA will be accounting for scheduled fleet turnover after the first-year budget. For instance, if State X's budget was 100 tons in 2021, but there are 10 tons of emissions from a unit scheduled to retire at the end of the year and 5 tons expected from a new unit coming online, then the state emission budget for 2022 would reflect these scheduled changes by establishing a budget of 100 tons—(10 tons -5 tons) = 95 tons for the subsequent year. This adjustment in methodology reflects the need to anticipate and respond to scheduled fleet turnover in the power sector in ensuring that the control strategy selected to eliminate significant contribution remains incentivized. Based on the Agency's experience implementing prior good neighbor trading programs, emissions budgets that do not account for planned retirements in subsequent years lead to an erosion in the allowance price signal and hence a reduced incentive to take the mitigation measures identified in EPA's significant contribution determination (*e.g.,* optimize SCRs). EPA's air quality projections demonstrate that even with a $1,600 per ton EGU strategy, the Group 3 states continue to contribute above the 1

[140] For states that were determined in the CSAPR Update to still have good neighbor obligations with respect to the 1997 ozone NAAQS in addition to the 2008 ozone NAAQS, participation in the Group 2 trading program replaced participation in the Group 1 program as the FIP remedy for such states' obligations with respect to the 1997 NAAQS. *See* 81 FR 74509.

percent of the NAAQS threshold to at least one receptor whose nonattainment and maintenance concerns persist through the 2024 ozone season (with the exception of Louisiana, as discussed in more detail below). As such, and in order to implement a full remedy as required under the *Wisconsin* decision, EPA proposes that it is necessary to design a Step 4 implementation framework that will effectively ensure the continued optimization of existing SCR and the incentive to install or upgrade combustion controls for so long as downwind nonattainment and maintenance concerns persist. Therefore, for all Group 3 states except Louisiana, the emission budget setting process described below applies to each year from 2021 through 2024, with the budgets held constant from 2024 onwards. For Louisiana, the emission budget setting process applies to 2021 and 2022 only, with the budget held constant from 2022 onwards, as the Houston receptor is resolved in 2023.

EPA is not proposing to increase the stringency of the program over these years in the sense of requiring any further emissions reductions than the control strategy represented by $1600 per ton achieves. Rather, these budget adjustments account for pre-existing, on-going changes in the EGU sector, which if not accounted for, could significantly weaken the incentive to optimize existing SCR and install or upgrade combustion controls. By determining emissions budgets for a given mitigation technology across a range of years (*e.g.,* 2021–2024), EPA is able to best reflect the realization of that mitigation strategy in any given year. For instance, a unit may be scheduled to retire (independent of any environmental regulation) in 2023. Therefore, the same $1,600 per ton uniform technology scenario (*i.e.,* SCR optimization and combustion control installation or upgrade) will produce a different state emissions level (*i.e.,* budget) in 2021 and 2024 due to this change in fleet composition. Having the emissions estimated for each year allows EPA to best ensure the reductions available from the identified control strategy continue to be achieved to eliminate that state's significant contribution. This type of phased implementation preserves the intended control stringency of the rule and is consistent with the direction under the *Wisconsin* decision to promulgate a full-remedy rule. In prior trading programs, stakeholders have observed that the program's static emission budgets quickly fell behind the rapid pace of change in the power sector fleet. As this occurs, a large allowance bank builds and the price of allowances falls below the price in the initial years. For example, CSAPR Update Group 2 allowances started out at levels near $800 per ton in 2017 and provided a strong signal for the mitigation technology identified in the significant contribution determination. However, in subsequent years as the fleet of covered EGUs changed, the price of those allowances declined to less than $70 per ton in July 2020.[141] Stakeholders have pointed out that these low prices could allow for some backsliding of the mitigation technologies (*e.g.,* reduced incentive to operate a SCR) that were initially determined to be cost-effective and required to eliminate significant contribution. At the same time that the incentive for EPA's selected control strategy weakens, EPA's data shows that downwind air quality receptors continue to persist at Step 1, and the overall level of anthropogenic emissions from an upwind state continues to contribute to those receptors above the contribution threshold at Step 2. Under these conditions, a legal basis exists within EPA's 4-step framework to undertake measures that ensure EGUs continue to implement EPA's selected control strategy. Stated differently, EPA is confident that it is well within its statutory authority under CAA section 110(a)(2)(D)(i)(I) to impose on each covered EGU in a linked Upwind state an emission limit that is enforceable and permanent, reflective of the control strategy EPA has determined is needed to eliminate significant contribution from that state. EPA is proposing an approach that better incentivizes the selected control strategy while retaining the flexible compliance benefits of an interstate-trading approach to implementation.[142]

In summary, in response to the *Wisconsin* court's direction to implement a full remedy, EPA is proposing to implement ozone season budgets for each year that reflect ongoing incentivization of the emission reduction measures identified in this rule, with a final budget being implemented in 2024 (the last year EPA projects downwind receptors to remain unresolved) and then held constant for each year thereafter. EPA requests comment on this approach (Comment C–21).

EPA's proposed emissions budget methodology and formula for establishing Group 3 budgets are described in detail in the Ozone Transport Policy Analysis Proposed Rule TSD and summarized below.

For determining emission budgets, EPA proposes to use historical ozone season data from the most recent year reported (that is, 2019 ozone season data for this proposed rulemaking). This is similar to its approach in the CSAPR Update where EPA began with 2015 data (the most recent year at the time). Like the CSAPR Update methodology, EPA is proposing to combine historical data with IPM data to determine emission budgets. The budget setting process has three primary steps:

(1) Determine a future year baseline—Start with the latest reported historical unit-level data (*e.g.,* 2019), and adjust any unit data where a retirement or new build is known to occur by the baseline year. This results in a future year (*e.g.,* 2021) baseline for emissions budget purposes.[143]

(2) Factor in additional mitigation controls for the selected cost threshold (*e.g.,* $1600 per ton). For the unit-level mitigation technologies identified at this cost level, adjust the baseline unit-level emissions and emission rates. For example, if a SCR-controlled unit had a baseline greater than 0.08 lb/mmBtu, its rate and corresponding emissions would be adjusted down to levels reflecting its operation at 0.08 lb/mmBtu.

(3) Incorporate generation shifting—Use IPM in relative way to capture the reductions expected from generation shifting at a given $ per ton level that reflects control optimization (constrained to within-state shifting).

By using historical unit and state-level NO_X emission rates, heat input, and emissions data at step 1 of the budget setting process, EPA is grounding its budgets in the most recent historical operation for the covered units.[144] This data is a reasonable starting point for the budget setting process as it reflects the latest data reported by affected facilities under 40 CFR part 75. The reporting requirements

[141] Data from S&P Global Market Intelligence.

[142] EPA continues to believe in the value of an interstate trading program for implementation of good neighbor obligations for EGUs. Through trading, the ultimate choice of compliance strategy is left to EGU owners and operators. EPA is not imposing an enforceable mandate that each EGU with an existing SCR or ability to install or upgrade combustion controls undertake the strategies represented by the $1600 per ton threshold. Sources have maximum flexibility to undertake compliance strategies that meet their specific operational and planning needs.

[143] EPA is using 2019 historical data at proposal because that was the latest available at that time. As 2020 data becomes available, EPA will evaluate it for potential use at the time of final rulemaking.

[144] EPA notes that historical state-level ozone season EGU NO_X emission rates are publicly available and quality assured data. They are monitored using CEMs or other methodologies allowed for use by qualifying units under 40 CFR part 75 and are reported to EPA directly by power sector sources.

include quality control measures, verification measures, and instrumentation to best record and report the data. In addition, the designated representatives of EGU sources are required to attest to the accuracy and completeness of the data. In step 1 of the budget setting process, EPA first adjusted the 2019 ozone-season data to reflect committed fleet changes under a baseline scenario (*i.e.,* announced and confirmed retirements, new builds, and retrofits that will, or have already occurred by 2021). For example, if a unit emitted in 2019, but retired in 2020, its 2019 emissions would not be included in the 2021 estimate. For units that had no known changes, the 2021 emissions assumption was the actual reported data from 2019 at this first step of adjusting the baseline. EPA also included known new units and scheduled retrofits in this manner. Using this method, EPA arrived at a baseline emission, heat input, and emission rate estimate for each unit for a future year (*e.g.,* 2021), and then was able to aggregate those unit-level estimates to state-level totals. These state-level totals constituted the state's baseline from an engineering analytics perspective. The ozone-season state-level emissions, heat input, and emissions rates for covered sources under a baseline scenario were determined for each future year examined (2021 through 2024). Because 2024 is the last ozone season that EPA projects continued contribution to any downwind receptors, 2024 is the last year EPA proposes to make an adjustment to emission budgets.

For step two of the emissions budget setting process, EPA examined how the baseline emissions and emission rates would change under different mitigation cost threshold scenarios for EGUs. For instance, under the $1,600 per ton scenario, if a unit was not operating its SCR at 0.08 lb/mmBtu or lower in the baseline, EPA lowered that unit's assumed emission rate to 0.08 lb/mmBtu and calculated the impact on the unit's and state's emission rate and emissions. Note, the heat input is held constant for the unit in the process, reflecting the same level of unit operation compared to historical 2019 data. An improved emission rate is then applied to this heat input, reflecting control optimization. In this manner, the state-level baseline totals from step one reflecting known baseline changes were adjusted to reflect the additional application of the assumed control technology at a given cost threshold.

Finally, at step three of the emissions budget setting process, EPA used IPM to capture any generation shifting at a given cost threshold (*e.g.,* $1,600 per ton) necessary for the respective mitigation technology to operate. EPA explains how it accounts for generation shifting in more detail in in Section VII.B and in the Ozone Transport Policy Analysis TSD. In this rule, as a proxy for the near-term reductions required by 2021, EPA has constrained generation shifting to occur only within-state. As explained in the Ozone Transport Policy Analysis TSD, the degree to which generation shifting affects the budgets is small, accounting for approximately 2 percent of baseline emissions for each year.

EPA requests comment on the proposed approaches described above, as well as alternatives discussed in the budget-setting TSD (Comment C–22). Specifically, EPA requests comment on its consideration of using 2020 data in place of 2019 data as the most recent historical data set to inform final rule budgets. Although the reduction potential associated with the selected control strategy described in section VII would likely not change substantially with that data set, the baseline values calculated in step one of the emissions budget setting process may change significantly and possibly result in lower or higher state-level emission budgets.

C. Elements of Proposed Trading Program

To implement the updated emissions budgets developed according to the process described in section VIII.B., EPA is proposing to require EGUs in each of the 12 covered states to participate in a new CSAPR NO_X Ozone Season Group 3 Trading Program. The provisions of the new Group 3 trading program would be largely identical to the provisions of the Group 2 trading program in which all of the covered EGUs currently participate, except for the differences in state budgets and geography established in this rule to address the covered states' remaining obligations under CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. The only other differences between the new Group 3 trading program regulations and the current Group 2 trading program regulations are a small number of proposed corrections and administrative simplifications that have no effect on program stringency; EPA proposes to eliminate these differences by making the same corrections and simplifications to the regulations for the Group 2 trading program and the other existing CSAPR trading programs.[145] In this section, the Agency discusses major elements of the proposed trading program, with emphasis on the elements that differ from the existing provisions of the Group 2 trading program as well as several provisions specifically designed to address the transition from the Group 2 trading program to the Group 3 trading program. EPA requests comment on use of the proposed trading program to implement the emissions reductions that are proposed to be required under this action (Comment C–23).

1. Applicability

In this rule, EPA proposes to use the same EGU applicability provisions in the new Group 3 trading program as it used in the existing Group 2 trading program and the other CSAPR trading programs, without change. Under the general CSAPR applicability provisions, a covered unit is any stationary fossil-fuel-fired boiler or combustion turbine serving at any time on or after January 1, 2005, a generator with nameplate capacity exceeding 25 MW, which is producing electricity for sale, with the exception of certain cogeneration units and solid waste incineration units.

2. State Budgets, Variability Limits, Assurance Levels, and Penalties

EPA is proposing to establish revised state budgets for EGU emissions of ozone season NO_X for the 12 ''Group 3'' states subject to new or amended FIPs in this proposed rule in order to fully address these states' significant contribution with respect to the 2008 ozone NAAQS. The budgets would be established according to the process described in section VIII.B. As discussed in that section, for each of the covered states, separate budgets are proposed for the three individual years 2021, 2022, and 2023, and then for 2024 and beyond.[146] Portions of the updated NO_X ozone season emission budgets would be reserved as updated new unit set-asides and Indian country new unit set-asides for the same control periods, as further described in sections VIII.C.3.b. and VIII.C.3.c. The amounts

[145] The proposed corrections and simplifications generally would apply to each of the five existing CSAPR trading programs at subparts AAAAA through EEEEE of 40 CFR part 97, and a subset would also apply to the Texas SO_2 Trading Program at subpart FFFFF of 40 CFR part 97. The specific proposed corrections and simplifications are described as applied to the new Group 3 trading program in sections VIII.C.1. through VIII.C.7. The same changes as applied to the existing programs are discussed in section VIII.C.8.

[146] See section VIII.C.4.a. for a discussion of transitional provisions that would apply in the event that the effective date for a final action in this rulemaking is after May 1, 2021.

of the proposed state emissions budgets for 2021, 2022, 2023, and 2024 and beyond are shown in tables VIII.C.2–1, VIII.C.2–2, VIII.C.2–3, and VIII.C.2–4.

The proposed requirement for EGU sources in these states to comply with the budgets established in this rulemaking will replace the existing requirements in these states under the CSAPR NO_X Ozone Season Group 2 Trading Program established in the CSAPR Update. For Group 3 states that were found in the CSAPR Update to still have good neighbor obligations with respect to the 1997 ozone NAAQS, EPA proposes that participation in the more stringent Group 3 trading program would satisfy those obligations.[147]

In the CSAPR and the CSAPR Update, EPA developed assurance provisions, including variability limits and assurance levels (with associated compliance penalties), to ensure that each state will meet its pollution control and emission reduction obligations and to accommodate inherent year-to-year variability in state-level EGU operations. Establishing assurance levels with compliance penalties responds to the D.C. Circuit's holding in *North Carolina* requiring EPA to ensure within the context of an interstate trading program that sources in each state are required to eliminate emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in another state.[148]

The CSAPR Update budgets, and the updated CSAPR emission budgets proposed in this document, reflect EGU operations in an ''average year.'' However, year-to-year variability in EGU operations occurs due to the interconnected nature of the power sector, changing weather patterns, changes in electricity demand, or disruptions in electricity supply from other units or from the transmission grid. Recognizing this, the trading program provisions finalized in the CSAPR and the CSAPR Update rulemakings include variability limits, which define the amount by which an individual state's emissions may exceed the level of its budget in a given year to account for variability in EGU operations. A state's budget plus its variability limit equals a state's assurance level, which acts as a cap on a state's NO_X emissions during a given control period (in this rulemaking, the relevant control period is the May–September ozone season). The new CSAPR NO_X Ozone Season Group 3 Trading Program provisions established for affected sources in the 12 states subject to the new trading program under this proposed rule contain equivalent assurance provisions to the prior CSAPR trading programs.

The variability limits ensure that the trading program can accommodate the inherent variability in the power sector while ensuring that each state eliminates the amount of emissions within the state, in a given control period, that must be eliminated to meet the statutory mandate of CAA section 110(a)(2)(D)(i)(I). Moreover, the structure of the trading program, which achieves required emission reductions through limits on the total numbers of allowances allocated, assurance provisions, and penalty mechanisms, ensures that the variability limits only allow the amount of temporal and geographic shifting of emissions that is likely to result from the inherent variability in power generation, and not from decisions to avoid or delay the optimization or installation of necessary controls.

To establish the variability limits in the CSAPR, EPA analyzed historical state-level heat input variability as a proxy for emissions variability, assuming constant emission rates. *See* 76 FR 48265. The variability limits for ozone season NO_X in both the CSAPR and the CSAPR Update were calculated as 21 percent of each state's budget, and these variability limits for the NO_X ozone season trading programs were then codified in 40 CFR 97.510 and 40 CFR 97.810, along with the respective state budgets. For this proposed rulemaking, EPA is proposing to retain variability limits for the 12 Group 3 states covered by this rule calculated as 21 percent of each state's revised budget.[149]

TABLE VIII.C.2–1—CSAPR NO_X OZONE SEASON GROUP 3 STATE BUDGETS, VARIABILITY LIMITS, AND ASSURANCE LEVELS FOR 2021 [150]

State	Emission budget (tons)	Variability limit (tons)	Assurance level (tons)
Illinois	9,444	1,983	11,427
Indiana	12,500	2,625	15,125
Kentucky	14,384	3,021	17,405
Louisiana	15,402	3,234	18,636
Maryland	1,522	320	1,842
Michigan	12,727	2,673	15,400
New Jersey	1,253	263	1,516
New York	3,137	659	3,796
Ohio	9,605	2,017	11,622
Pennsylvania	8,076	1,696	9,772
Virginia	4,544	954	5,498
West Virginia	13,686	2,874	16,560

[147] Out of the 12 states proposed for inclusion in the Group 3 trading program, Illinois, Indiana, Kentucky, and Louisiana were found in the CSAPR Update to still have good neighbor obligations with respect to the 1997 ozone NAAQS. *See* 81 FR 74509 n.21 (November 21, 2016).

[148] 531 F.3d at 908.

[149] See section VIII.C.4.a. for a discussion of transitional provisions that would apply in the event that the effective date for a final action in this rulemaking is after May 1, 2021.

[150] The state-level emission budget calculations pertaining to Tables VIII.C.2–1 through VIII.C.2–4 are described in section VIII.B, and in greater detail in the Ozone Transport Policy Analysis TSD. Budget calculations and underlying data are also available in Appendix A of that TSD.

TABLE VIII.C.2–2—CSAPR NO_X OZONE SEASON GROUP 3 STATE BUDGETS, VARIABILITY LIMITS, AND ASSURANCE LEVELS FOR 2022

State	Emission budget (tons)	Variability limit (tons)	Assurance level (tons)
Illinois	9,415	1,977	11,392
Indiana	11,998	2,520	14,518
Kentucky	11,936	2,507	14,443
Louisiana	14,871	3,123	17,994
Maryland	1,498	315	1,813
Michigan	11,767	2,471	14,238
New Jersey	1,253	263	1,516
New York	3,137	659	3,796
Ohio	9,676	2,032	11,708
Pennsylvania	8,076	1,696	9,772
Virginia	3,656	768	4,424
West Virginia	12,813	2,691	15,504

TABLE VIII.C.2–3—CSAPR NO_X OZONE SEASON GROUP 3 STATE BUDGETS, VARIABILITY LIMITS, AND ASSURANCE LEVELS FOR 2023

State	Emission budget (tons)	Variability limit (tons)	Assurance level (tons)
Illinois	8,397	1,763	10,160
Indiana	11,998	2,520	14,518
Kentucky	11,936	2,507	14,443
Louisiana	14,871	3,123	17,994
Maryland	1,498	315	1,813
Michigan	9,803	2,059	11,862
New Jersey	1,253	263	1,516
New York	3,137	659	3,796
Ohio	9,676	2,032	11,708
Pennsylvania	8,076	1,696	9,772
Virginia	3,656	768	4,424
West Virginia	11,810	2,480	14,290

TABLE VIII.C.2–4—CSAPR NO_X OZONE SEASON GROUP 3 STATE BUDGETS, VARIABILITY LIMITS, AND ASSURANCE LEVELS FOR 2024 AND BEYOND

State	Emission budget (tons)	Variability limit (tons)	Assurance level (tons)
Illinois	8,397	1,763	10,160
Indiana	9,447	1,984	11,431
Kentucky	11,936	2,507	14,443
Louisiana	14,871	3,123	17,994
Maryland	1,498	315	1,813
Michigan	9,614	2,019	11,633
New Jersey	1,253	263	1,516
New York	3,119	655	3,774
Ohio	9,676	2,032	11,708
Pennsylvania	8,076	1,696	9,772
Virginia	3,395	713	4,108
West Virginia	11,810	2,480	14,290

The assurance provisions include penalties that are triggered in the event that the covered sources' emissions in a given state, as a whole, exceed the state's assurance level. The CSAPR and the CSAPR Update provided that, when the emissions from EGUs in a state exceed that state's assurance level in a given year, particular sources within that state will be assessed a 3-to-1 allowance surrender on the exceedance of the assurance level. Specifically, each excess ton above a given state's assurance level must be met with one allowance, per standard compliance, and two additional allowances to satisfy the penalty. The penalty was designed to deter state-level emissions from exceeding assurance levels. In both the CSAPR and the CSAPR Update, the assurance provisions were designed to account for variability in the electricity sector while ensuring that the necessary emission reductions occur within each covered state, consistent with the court's holding in *North Carolina,* 531 F.3d at 908. If EGU emissions in a given state do not exceed that state's assurance level, no penalties are incurred by any source.

To assess the penalty under the assurance provisions, EPA is proposing to follow the same methodology

finalized in the CSAPR Update. *See* 81 FR 74567. In that methodology, EPA evaluates whether any state's total EGU emissions in a control period exceeded the state's assurance level, and if so, EPA then determines which groups of units in the state represented by a ''common designated representative'' emitted in excess of the common designated representative's share of the state assurance level and, therefore, will be subject to the allowance surrender requirement described above. Penalties under the assurance provisions are triggered for the group of sources represented by a common designated representative when two conditions are met: (1) The group of sources and units with a common designated representative are located in a state where the total state EGU emissions for a control period exceed the state assurance level; and (2) that group with the common designated representative had emissions exceeding the respective common designated representative's share of the state assurance level. EPA is proposing assurance provisions for the CSAPR NO_X Ozone Season Group 3 Trading Program that are equivalent to the assurance provisions in the CSAPR NO_x Ozone Season Group 2 Trading Program.

In this action, EPA is proposing minor revisions to the procedures for administering the assurance provisions starting with the 2023 control period [151] for consistency with proposed revisions to the process for allocating allowances from the new unit set-asides that are discussed in section VIII.C.3.b. The same minor revisions are proposed to be implemented in the existing CSAPR trading programs, as discussed in section VIII.C.8. The proposed revisions concern the procedures for determining the portion of the state's assurance level to be assigned to each common designated representative. Specifically, certain provisions of these procedures are designed to address circumstances where a new unit operates but has no allowance allocation determined for it. Administration of these provisions requires EPA to issue a notice to collect information needed solely for this purpose that is not otherwise required to be reported to EPA. Because the revised new unit set-aside (''NUSA'') allocation procedures would eliminate the possibility that a new unit would not have an allowance allocation determined for it, EPA proposes to eliminate the provisions for issuance of the related extra notice starting with the 2023 control period. EPA also proposes to extend the date as of which a common designated representative is determined under both the new Group 3 program and the existing CSAPR programs from April 1 of the year following the control period to July 1 so as to preserve the relationship of those dates to the allowance transfer deadline, which is proposed to be extended from March 1 of the year following the control period to June 1.[152] Further discussion of these changes from the current provisions in the existing trading programs is provided in section VIII.C.8.

EPA requests comment on the proposed state budgets, variability limits, assurance levels, and assurance provisions (Comment C–24).

3. Unit-Level Allocations of Emissions Allowances

For states participating in the CSAPR Group 3 trading program, EPA proposes to issue CSAPR NO_X Ozone Season Group 3 allowances to be used for compliance beginning with the 2021 ozone season. This section explains the process by which EPA proposes to allocate these allowances to existing units and new units in each state up to that state's budget. For existing units, EPA is proposing to apply the same allocation methodology finalized in the CSAPR Update but using updated data. This methodology considers both a unit's historical heat input and its maximum historical emissions. *See* 81 FR 74564–65. For new units, EPA is proposing to apply the same two-round allocation methodology finalized in the CSAPR Update for the 2021 and 2022 control periods and a similar, but less complex, one-round methodology starting with the 2023 control period. This section also describes allocation to the new unit set-asides (NUSA) and Indian Country new unit set-asides in each state; allocation to units that are not operating; and the recordation of allowance allocations in facility compliance accounts.

a. Allocations to Existing Units

EPA in this action proposes to allocate allowances to existing units in the Group 3 states following the same methodology for allowance allocation that was used in the CSAPR Update, except that the historical heat input and other data used within this methodology to establish unit-level allocations would be updated to the most recent period for which EPA has data. The portion of a state budget allocated to existing units in that state would be the state budget minus the state's new unit set-aside and minus the state's Indian country new unit set-aside. The new unit set-asides are portions of each budget reserved for new units that might locate in each state or in Indian country in the future. For the proposed existing source level allocations, see the Proposed Rule TSD ''Unit Level Allocations and Underlying Data for the CSAPR for the 2008 Ozone NAAQS,'' in the docket for this rulemaking. The only allowance allocations that would be updated in this final rule are allocations of CSAPR NO_X Ozone Season Group 3 allowances issued under and used for compliance in the Group 3 trading program. EPA is not proposing to change allocations of allowances used in the CSAPR NO_X Ozone Season Group 1 or Group 2, NO_X Annual, or SO_2 Group 1 or Group 2 trading programs and is not reopening the previously established allocations under these programs.

For the purpose of allocations, the CSAPR considered an ''existing unit'' to be a unit that commenced commercial operation prior to January 1, 2010, and the CSAPR Update considered an ''existing unit'' to be a unit that commenced commercial operation prior to January 1, 2015. For the 12 states subject to new or amended FIPs in this rulemaking, EPA proposes to consider an ''existing unit'' for purposes of the Group 3 program to be a unit that commenced commercial operation prior to January 1, 2019, and that does not cease operation before January 1, 2021. This change will allow units commencing commercial operation between 2015 and 2019 to be directly allocated allowances from each state's budget as existing units and will allow the new unit set-asides to be fully reserved for any future new units locating in covered states or Indian country. Using data available at the time of proposal development, EPA has identified which units in the proposed Group 3 states that currently submit quarterly emissions reports to EPA appear to be eligible or ineligible to receive allowance allocations as existing units; [153] for the final rule, EPA anticipates that the lists of units will be updated with the most recent data. EPA is not proposing to reconsider which units are ''existing units'' for purposes of any other CSAPR trading program.

[151] As discussed in section VIII.C.8.b., EPA is also requesting comment on implementing the revised procedures starting with the 2021 control periods.

[152] As discussed in section VIII.C.8., in order to minimize unnecessary differences between the CSAPR trading programs and the similarly structured Texas SO_2 Trading Program, EPA is also proposing to revise the date for determination of a common designated representative under the Texas SO_2 Trading Program as of the 2023 control period.

[153] *See* ''CSAPR NO_X OS Group 3—Unit Level Allocations and Underlying Data.xls'', available in the docket.

Sources in most of the proposed Group 3 states also participate in the CSAPR NO_X Annual and SO_2 Group 1 trading programs, for which an ''existing unit'' is a unit that commenced commercial operation before January 1, 2010. Thus, a unit that is located in one of these states and that commenced commercial operation between January 1, 2010, and January 1, 2019, would be considered an ''existing unit'' for purposes of the Group 3 trading program but would continue to be considered a ''new unit'' for purposes of the CSAPR NO_X Annual and SO_2 Group 1 trading programs.

EPA proposes to apply the methodology finalized in the CSAPR Update for allocating emission allowances to existing units, updated to the most recent years of relevant data by the respective publication dates of this proposed and final action. This methodology allocates allowances to each unit based on the unit's share of the state's heat input, limited by the unit's maximum historical emissions. As discussed in the CSAPR Update, *see* 81 FR 74563–65, EPA finds this allowance allocation approach to be fuel-neutral, control-neutral, transparent, based on reliable data, and similar to allocation methodologies previously used in the CSAPR, the NO_X SIP Call, and the Acid Rain Program.[154] EPA is therefore proposing the continued application of this methodology for allocating allowances to existing sources in this proposed rule. Under the CSAPR Update, if, at the time the rule was finalized, a state had already submitted a SIP revision addressing the allocation of the CSAPR NO_X ozone season allowances among the units in the state, and if the SIP submission's allocation provisions could be applied to an updated budget, the state's preferred allocation methodology would govern the allocation of allowances among that state's units under the final CSAPR Update. Two of the proposed Group 3 states (Indiana and New York) have such methodologies for allocating the CSAPR NO_X Ozone Season Group 2 allowances among their units. EPA is proposing to carry out the intent of these SIPs by establishing initial allowance allocations to existing units under the FIPs for these two states using the allocation methodologies already adopted by the states.

This proposed rule uses the average of the three highest years of heat input data out of the most recent five-year period to establish the heat input baseline for each unit.[155] These heat input data are used to calculate each unit's proportion of state-level heat input (the average of the unit's three highest non-zero years of heat input divided by the total of such averages within the given state). In general, EPA applies this proportion to the total amount of existing unit allowances to be allocated to quantify unit-level allocations. However, EPA constrains the unit-level allocations so as not to exceed each unit's maximum historical baseline emissions, calculated as the highest year of emissions out of the most recent eight-year period.[156] This proposal evaluates 2015–2019 heat input data and 2012–2019 emissions data, which are the most recent data available as of proposal publication. EPA proposes to recalculate unit level allocations with the most recent five years of heat input and the most recent eight years of emissions data along with the most recent supporting data in the final rule.

As under both the CSAPR and the CSAPR Update, states would have several options under this proposed rulemaking to submit SIP revisions which, if approved, may result in the replacement of EPA's default allocations with state-determined allocations for the 2022 control period and beyond. The provisions described above will not preclude any state from submitting an alternative allocation methodology for later control periods through a SIP submission. See section VIII.D. for details on the development of approvable SIP submissions.

EPA requests comment on the proposed approach for allocating allowances to existing units (Comment C–25).

b. Allocations to New Units

Consistent with the updates to which units are considered to be ''existing units'' described above, for purposes of this proposed rule a ''new unit'' that is eligible to receive allocations from the new unit set-aside (NUSA) for a state includes any covered unit that commences commercial operation on or after January 1, 2019, as well as a unit that becomes covered by meeting applicability criteria subsequent to January 1, 2019; a unit that relocates to a different state covered by a FIP promulgated by this rule; and an ''existing'' covered unit that ceases operation for two consecutive years following the start of program implementation (thereby losing its previous allowance allocation as an ''existing'' unit) but that resumes operation at some point thereafter. EPA is also proposing allocations to a NUSA for each state equal to a minimum of 2 percent of the total state budget, plus the projected amount of emissions from planned units in that state. For instance, if planned units in a state are projected to emit 3 percent of the state's NO_X ozone season emission budget, then the new unit set-aside for the state would be set at 5 percent, which is the sum of the minimum 2 percent set-aside plus an additional 3 percent for planned units. This is the same approach currently used to implement the NUSA for all the CSAPR trading programs. *See* 76 FR 48292 (August 8, 2011). Note that New York has set its NUSA percentage within its approved SIP to 5 percent without consideration of planned units; therefore, this NUSA percentage is proposed to be used for New York. Pursuant to the CSAPR regulations, new units may receive allocations starting with the first year they are subject to the allowance-holding requirements of the rule. If the allowances in the NUSA remain unallocated to new units, the allowances from the set-asides are redistributed to existing units before each compliance deadline.

[154] *See* 40 CFR parts 72–78.

[155] As described in the Unit Level Allowance Allocations TSD and done in prior CSAPR actions, the allocation method uses a five-year baseline in order to improve representation of a unit's normal operating conditions. Using the three highest, non-zero ozone season heat input values within the five-year baseline reduces the likelihood that any particular single year's operations (which might not be representative due to outages or other unusual events) determine a unit's allocation.

[156] EPA's allocation methodology also considers whether unit-level allocations should be limited because they would otherwise exceed emission levels that are permissible under the terms of consent decrees. However, in this instance EPA's analysis indicates that consideration of consent decree limits does not alter the unit-level allocations.

TABLE VIII.C.3–1—CSAPR NO_X OZONE SEASON GROUP 3 NEW UNIT SET-ASIDE (NUSA) AMOUNTS FOR 2021

State	Emission budgets (tons)	New unit set-aside amount (percent)	Total new unit set-aside amount for new units (tons)	New unit set-aside amount for new units not in Indian country (tons)	Indian country new unit set-aside amount (tons)
Illinois	9,444	2	181	181	.....
Indiana	12,500	2	253	253	.....
Kentucky	14,384	2	289	289	.....
Louisiana	15,402	3	459	444	15
Maryland	1,522	2	31	31	.....
Michigan	12,727	3	384	371	13
New Jersey	1,253	2	27	27	.....
New York	3,137	5	157	154	3
Ohio	9,605	3	285	285	.....
Pennsylvania	8,076	4	326	326	.....
Virginia	4,544	2	91	91	.....
West Virginia	13,686	2	273	273	.....

TABLE VIII.C.3–2—CSAPR NO_X OZONE SEASON GROUP 3 NEW UNIT SET-ASIDE (NUSA) AMOUNTS FOR 2022

State	Emission budgets (tons)	New unit set-aside amount (percent)	Total new unit set-aside amount for new units (tons)	New unit set-aside amount for new units not in Indian country (tons)	Indian country new unit set-aside amount (tons)
Illinois	9,415	2	181	181	.....
Indiana	11,998	2	238	238	.....
Kentucky	11,936	2	240	240	.....
Louisiana	14,871	3	445	430	15
Maryland	1,498	2	33	33	.....
Michigan	11,767	3	352	340	12
New Jersey	1,253	2	27	27	.....
New York	3,137	5	157	154	3
Ohio	9,676	3	291	291	.....
Pennsylvania	8,076	4	326	326	.....
Virginia	3,656	2	76	76	.....
West Virginia	12,813	2	261	261	.....

TABLE VIII.C.3–3—CSAPR NO_X OZONE SEASON GROUP 3 NEW UNIT SET-ASIDE (NUSA) AMOUNTS FOR 2023

State	Emission budgets (tons)	New unit set-aside amount (percent)	Total new unit set-aside amount for new units (tons)	New unit set-aside amount for new units not in Indian country (tons)	Indian country new unit set-aside amount (tons)
Illinois	8,397	2	173	173	.....
Indiana	11,998	2	238	238	.....
Kentucky	11,936	2	240	240	.....
Louisiana	14,871	3	445	430	15
Maryland	1,498	2	33	33	.....
Michigan	9,803	3	296	286	10
New Jersey	1,253	2	27	27	.....
New York	3,137	5	157	154	3
Ohio	9,676	3	291	291	.....
Pennsylvania	8,076	4	326	326	.....
Virginia	3,656	2	76	76	.....
West Virginia	11,810	2	236	236	.....

TABLE VIII.C.3–4—CSAPR NO_X OZONE SEASON GROUP 3 NEW UNIT SET-ASIDE (NUSA) AMOUNTS FOR 2024 AND BEYOND

State	Emission budgets (tons)	New unit set-aside amount (percent)	Total new unit set-aside amount for new units (tons)	New unit set-aside amount for new units not in Indian country (tons)	Indian country new unit set-aside amount (tons)
Illinois	8,397	2	173	173	.....
Indiana	9,447	2	188	188	.....
Kentucky	11,936	2	240	240	.....
Louisiana	14,871	3	445	430	15
Maryland	1,498	2	33	33	.....
Michigan	9,614	3	287	277	10
New Jersey	1,253	2	27	27	.....
New York	3,119	5	156	153	3
Ohio	9,676	3	291	291	.....
Pennsylvania	8,076	4	326	326	.....
Virginia	3,395	2	68	68	.....
West Virginia	11,810	2	236	236	.....

For the control periods in 2021 and 2022, EPA proposes to apply the same two-round approach for allocating allowances from each state's NUSA to eligible units as EPA has historically used in all the previous CSAPR trading programs. Under this approach, in the first round, which is carried out during the control period at issue, any eligible units in the state that operated during the preceding control period are allocated allowances in proportion to their respective emissions during that preceding control period, up to the amounts of those emissions if the NUSA contains sufficient allowances. In the second round, which is carried out after the end of the control period at issue, if the first-round allocations did not exhaust the NUSA, any eligible units in the state that commenced operation in the control period or the preceding control period are allocated additional allowances in proportion to the positive differences (if any) between their emissions during the control period and their first-round allocations, up to the amounts of those differences if the NUSA contains sufficient allowances. Any allowances remaining in the NUSA after the second round are reallocated to the existing units in the state.

For control periods in 2023 and thereafter,[157] EPA proposes to replace the two-round approach described above—for purposes of both the new Group 3 trading program and the existing CSAPR trading programs—with a one-round approach that would be carried out after the end of the control period at issue. Under the proposed one-round approach, any eligible units in the state that operated during the control period will be allocated allowances in proportion to their respective emissions during the control period, up to the amounts of those emissions if the NUSA contains sufficient allowances. EPA believes this one-round approach would be both less complex than the two-round approach and more equitable, because it would avoid potential situations under the two-round approach where the newest units may not receive any NUSA allocations. In order to provide sufficient time to carry out the one-round approach after the end of the control period, several deadlines would be extended (again, for purposes of both the new Group 3 trading program and the existing trading programs) starting with the control periods in 2023. Specifically, the deadline for EPA to promulgate a notice regarding preliminary calculations of NUSA allocations would be set at March 1 after the control period; the deadline for EPA to promulgate a notice regarding the final calculations and to record the NUSA allocations would be set at May 1 after the control period; the ''allowance transfer deadline'' by which sources must hold sufficient allowances to cover their emissions during the control period would be set at June 1 after the control period; and the date as of which each source's ''common designated representative'' is determined for purposes of the assurance provisions would be set at July 1 after the control period. The proposed changes and EPA's rationale are discussed further in section VIII.C.8.

EPA requests comment on the proposed approach for reserving portions of the budgets as new unit set-asides and allocating allowances to new units (Comment C–26).

[157] As discussed in section VIII.C.8.b., EPA is also requesting comment on implementing the revised procedures starting with the 2021 control periods.

c. Allocations to New Units in Indian Country

Clean Air Act programs on Indian reservations and other areas of Indian country over which a tribe or EPA has demonstrated that a tribe has jurisdiction generally may be implemented either by a tribe through an EPA-approved tribal implementation plan (TIP) or EPA through a FIP. Tribes may, but are not required to, submit TIPs. Under EPA's Tribal Authority Rule (TAR), 40 CFR 49.1–49.11, EPA is authorized to promulgate FIPs for Indian country as necessary or appropriate to protect air quality if a tribe does not submit and receive EPA approval of a TIP. *See* 40 CFR 49.11(a); *see also* 42 U.S.C. 7601(d)(4). To date, no tribes have sought approval of a TIP implementing the good neighbor provision at CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. EPA has therefore determined that it is necessary and appropriate for EPA to implement the FIPs in any affected Indian reservations or other areas of Indian country over which a tribe has jurisdiction. However, there are no existing units that would qualify as ''covered units'' in Indian country located in the proposed Group 3 states under this proposal.

EPA is proposing to generally apply the CSAPR Update approach for allocating allowances to any new units located in Indian country, with parallel modifications to those described above with respect to unit-level allocations from the new unit set-asides for units not in Indian country. Under this approach, allowances to possible future new units located in Indian Country would be allocated by EPA from an Indian country new unit set-aside established for each state with Indian

country. EPA proposes to reserve 0.1 percent of the total state budget for new units in Indian Country within that state (5 percent of the minimum 2 percent new unit set-aside,[158] without considering any increase in a state's new unit set-aside amount for planned units). Because states generally have no SIP authority in these areas, EPA would continue to handle the allocation of allowances to any sources that locate in such areas of Indian country within a state over which a tribe or EPA has demonstrated that a tribe has jurisdiction, even if the state submits a SIP to replace the applicable FIP. Unallocated allowances from a state's Indian country new unit set-aside would be returned to the state's new unit set-aside and allocated according to the methodology for that new unit set-aside.

For the control periods in 2021 and 2022, EPA proposes to apply the same two-round approach for allocating allowances from each state's Indian country NUSA to eligible units as EPA has historically used in all the previous CSAPR trading programs, and for control periods in 2023 and thereafter,[159] EPA proposes to apply a one-round approach as described above for other NUSAs. The proposed change to a one-round allocation approach for Indian country NUSAs would involve the same deadline extensions as discussed above with respect to other NUSAs and would also apply with respect to Indian country NUSAs under the existing CSAPR trading programs. Further discussion is provided in section VIII.C.8.

EPA requests comment on the proposed approach for reserving portions of the budgets as Indian country new unit set-asides and allocating allowances to new units in Indian country (Comment C–27).

d. Treatment of Allowances Allocated to Units That Cease Operations

EPA is proposing to apply the same approach followed in the CSAPR Update for reallocating allowances that were previously allocated to units that cease operations. Specifically, EPA proposes that a covered unit that does not operate for a period of two consecutive years after the start of trading program implementation will receive allowance allocations for a total of up to five years of non-operation. As in the CSAPR Update, this approach mitigates concerns that loss of allowance allocations could be an economic consideration that would cause a unit, which would otherwise retire, to continue operations in order to retain ongoing allowance allocations. Pursuant to this provision, starting in the fifth year after the first year of non-operation, EPA proposes that allowances previously allocated to such units would instead be allocated to the new unit set-aside for the state in which the non-operating unit is located. This approach allows the balance of allowance allocations to shift over time from existing units to new units, aligned with transition of the EGU fleet from older generating resources to newer ones. Allowances in the new unit set-aside that are not used by new units would be reallocated to existing units in the state. EPA proposes to retain this same CSAPR Update timeline for allowance allocation for non-operating units in this rulemaking. EPA requests comment on the proposed approach for addressing allowances allocated to units that have ceased operation (Comment C–28).

In order to accommodate a changing power sector and account for units that permanently retire and therefore no longer have emissions, EPA is taking comment on whether the NUSA should be modified such that allowances from these units that are placed in the NUSA should not be reallocated at the end of the year. Ultimately, in the absence of new units, these allowances would be redistributed to existing units. EPA seeks comment on whether allowances from retired units should remain in the NUSA rather than being redistributed to existing units, except in the event that those allowances are allocated to new units (Comment C–29).

Alternatively, in order to accommodate a changing power sector and account for the year-to-year variation in generation and potential change in usage of units over time, EPA is seeking comment on an allocation alternative (Comment C–30). Noting that budgets are based on a constant level of heat input over time and that heat input levels have generally decreased over time, EPA asks for comment on the possibility of initially distributing the average budget level of allowances per control period minus the variability limit (*i.e.,* 79 percent of budget given a variability limit of 21 percent). Then, if the actual observed heat input for a given control period is greater than the heat input amount assumed in the original allocation, additional supplemental allowances would be provided up to the assurance level (*i.e.* 121 percent of the regional emission budget). In this methodology, the actual number of allowances allocated each control period would be explicitly tied to the heat input of that same control period. As an example, consider an original allowance allocation based on 79 percent of the aggregate Group 3 budget. If, after the conclusion of the ozone season, heat input is only 3 percent below the heat input level assumed in the emission budget, EPA would then allocate allowances to cover the remaining percentage of allowances withheld from the initial allocation.

4. Transitioning From Existing CSAPR NO_X Ozone Season Group 2 Trading Program

This section discusses three sets of provisions that EPA proposes to implement in order to address the transition of sources from the Group 2 trading program to the Group 3 trading program. First, to address the possibility that final action on this proposal may not become effective until after May 1, 2021, and to ensure that under those circumstances the Group 3 trading program could be implemented for the full May-September ozone season in 2021 without imposing retroactive emission reduction requirements, EPA is proposing to allocate additional allowances, and to make corresponding adjustments to states' 2021 assurance levels, so as to offset the otherwise applicable emission reduction requirements under this rulemaking for any portion of the 2021 ozone season that may occur before the final rule's effective date. Second, in order to facilitate the continued use of market-based trading programs as the compliance mechanism for sources covered by this action while ensuring an appropriate level of stringency in the Group 3 trading program, EPA is proposing a process by which certain banked CSAPR NO_X Ozone Season Group 2 allowances will be converted to CSAPR NO_X Ozone Season Group 3 allowances. Finally, to maintain the previously established levels of stringency of the Group 2 trading program for the states and sources that remain subject to that program under this action, EPA is also proposing that the CSAPR NO_X Ozone Season Group 2 allowances equivalent in amount and vintage to the previously allocated vintage year 2021–2024 CSAPR NO_X Ozone Season Group 2 allowances in the new Group 3 region will be recalled.

[158] In the CSAPR rulemaking, based on analysis of a set of states that includes all the proposed Group 3 states in this action, EPA determined that among the states analyzed, in the state for which Indian country represented the largest share of the total area within the state's borders, that share was 5 percent. *See* 76 FR 48293 (December 27, 2011). EPA adopted the same 5 percent figure in the CSAPR Update. *See* 81 FR 74565–66 (May 27, 2016).

[159] As discussed in section VIII.C.8.b., EPA is also requesting comment on implementing the revised procedures starting with the 2021 control periods.

a. Supplemental Allowance Allocations To Avoid Retroactive Emission Reduction Requirements

EPA expects to take a final action in this rulemaking by March 15, 2021 and anticipates that the final rule will be published in the **Federal Register** by early April, before the start of the 2021 ozone season on May 1, 2021. However, because of the requirements of the Congressional Review Act (CRA), 5. U.S.C. 801–808, EPA is unable at this time to predict whether the increased trading program stringency established in the final rule will take effect as of May 1, 2021. Under CRA section 801(a)(3), a ''major rule,'' as defined under the CRA, generally may not take effect sooner than 60 days after the date of publication in the **Federal Register** (or, if later, 60 days after the date on which Congress receives a report on the final rule from EPA). Under CRA section 804(2), a ''major rule'' includes any rule that the Office of Management and Budget (OMB) finds is likely to result in an annual effect on the economy of $100 million or more. Because the final action in this rulemaking is projected to result in annualized benefits greater than $100 million per year, as discussed in section IX of the preamble, it is possible that OMB could find that the final action on this proposal would be a ''major rule'' for CRA purposes, in which case the rule's effective date could occur after the start of the 2021 ozone season.

EPA proposes to find that, notwithstanding that the final rule's requirements may not be able to take effect until after May 1, 2021, it would nevertheless serve the public interest and greatly aid in administrative efficiency for most elements of the Group 3 trading program—specifically, all elements of the trading program other than the elements designed to establish more stringent emissions limitations for the sources in Group 3 states—to start on May 1, 2021. This will facilitate implementation of the Group 3 trading program in an orderly manner for the entire 2021 ozone season and reduce compliance burdens and potential confusion. Each of the CSAPR trading programs for ozone season NO_X is designed to be implemented over an entire ozone season. Implementing the transition from the Group 2 trading program to the Group 3 trading program in a manner that required the covered sources to participate in the Group 2 trading program for part of the 2021 ozone season and the Group 3 trading program for the remainder of that ozone season would be complex and burdensome for sources. Attempting to address the issue by splitting the Group 2 and Group 3 requirements into separate years is not a viable approach, because EPA would have no legal basis for releasing the Group 3 sources from the emission reduction requirements found to be necessary in the CSAPR Update for a portion of the 2021 ozone season, and EPA similarly would have no legal basis for deferring implementation of the 2021 emissions reduction requirements found to be necessary under this rule until 2022. Moreover, the requirements of the Group 2 trading program and the Group 3 trading program are substantively identical as to almost all provisions, such that with respect to those provisions, a source would not need to alter its operations in any manner or face different compliance obligations as a consequence of a transition from the Group 2 trading program to the Group 3 trading program. Thus, EPA believes that no substantive concerns regarding retroactivity would arise from implementing the Group 3 trading program starting on May 1, 2021, so long as those aspects of the Group 3 trading program that *do* meaningfully differ from the analogous aspects of the Group 2 trading program—that is, the relative stringencies of the two trading programs, as reflected in the emissions budgets and associated assurance levels—are applied only as of the effective date of the final rule.

Thus, with respect to two aspects of the proposed rule, EPA proposes the following adjustments in 2021 ozone season obligations in order to ensure no new requirements are imposed on any regulated parties prior to the effective date of the final rule.

To cause the more stringent budgets of the Group 3 trading program to apply only after the effective date of the final rule, EPA proposes to make supplemental allocations of Group 3 allowances to Group 3 sources for the portion of the 2021 ozone season occurring before the effective date of the final rule. The total amount of the supplemental allowances available for allocation to the sources in each state would be calculated by multiplying the difference between the state's Group 2 and Group 3 budgets by the fraction of the 2021 ozone season, measured in days, occurring before the final rule's effective date. The state's total amount of supplemental allowances would then be allocated among the state's existing units as if the supplemental allowances had been included in the state's 2021 emissions budget for the Group 3 trading program. The allocations of supplemental allowances would be recorded at the same time as the allocations from the budget.

To cause the more stringent assurance levels of the Group 3 trading program to apply only after the effective date of the final rule, EPA proposes to include an increment in each state's assurance level for 2021 in addition to the state's emissions budget and variability limit for 2021. The amount of the increment would be computed as 1.21 times the total amount of supplemental allowances determined for the state as described above, where 1.21 is the ratio of the Group 2 state assurance levels to the Group 2 state budgets and is also the ratio of the proposed Group 3 state assurance levels to the proposed Group 3 state budgets. In the event of an exceedance of a state's assurance level, the allocations of supplemental allowances and the increment to the state's variability limit would also be taken into account for purposes of the calculations used to apportion responsibility for any exceedance of a state's assurance level among the owners and operators of the state's sources.

In all respects other than the allocation of supplemental Group 3 allowances and the addition of an increment to the states' assurance levels, EPA proposes to implement the Group 3 trading program for the 2021 control period exactly as the program would be implemented for any other control period. Thus, allocations of Group 3 allowances from each state's emissions budget to existing and new units would be made for the entire 2021 ozone season (*i.e.,* May 1, 2021 through September 30, 2021), emissions would be monitored and reported for the entire 2021 ozone season, and as of the allowance transfer deadline for the 2021 control period (*i.e.,* March 1, 2022) each source would be required to hold in its compliance account vintage-year 2021 Group 3 allowances not less than the source's emissions of NO_X during the entire 2021 ozone season. Because of the supplemental allowances allocated for the portion of the 2021 ozone season before the rule's effective date, EPA proposes to find that implementing the program in this manner would substantively apply the final rule's emissions reduction requirements only from the rule's effective date. Similarly, because of the increment to the states' assurance levels for 2021, EPA proposes to find that implementing the trading program in this manner would substantively apply the final rule's more stringent assurance levels only from the rule's effective date. Moreover, any efforts undertaken by a source to reduce its emissions during the portion of the

2021 ozone season before the effective date of the rule would aid the source's compliance by reducing the amount of Group 3 allowances that the source would need to hold in its compliance account as of the allowance transfer deadline, increasing the range of options available to the source for meeting its compliance obligations under the Group 3 trading program.

EPA requests comment on the proposed approach for implementing the Group 3 trading program in a manner that would apply the substantive increases in stringency established under the final rule on and after, but not before, the final rule's effective date (Comment C–31).

b. Creation of Initial Group 3 Allowance Bank

For this rulemaking, EPA is proposing to convert allowances banked in 2017–2020 under the CSAPR NOx Ozone Season Group 2 Trading Program into a limited number of allowances that can be used for compliance in the CSAPR NOx Ozone Season Group 3 Trading Program. Any treatment of banked allowances must ensure that implementation of the Group 3 trading program will result in NO_X emission reductions sufficient to address significant contribution in the 12 linked Group 3 states, while also providing industry certainty (and obtaining an environmental benefit) through continued recognition of the value of saving allowances through early reductions in emissions. EPA's approach to balancing these concerns in the CSAPR Update through the use of a conversion ratio for banked allowances from the CSAPR ozone season trading program was upheld in *Wisconsin* v. *EPA, see* 938 F.3d at 321.

Similar to the approach taken in the CSAPR update, EPA is proposing a one-time conversion of banked Group 2 allowances according to a formula which ensures that emissions in the Group 3 trading program region in the first year of the program do not exceed a specified level (defined as emissions up to the sum of the states' seasonal emissions budgets and variability limits) as a result of the use of banked allowances from the Group 2 trading program. EPA proposes to carry out the conversion no later than 180 days after the date of publication of the final action in this rulemaking in the **Federal Register**. The conversion would occur after the surrenders of allowances for compliance for the 2020 control period are completed by March 1, 2021, which is the allowance transfer deadline. The proposed conversion ratio would be calculated by a formula, the numerator of which would be the total number of banked Group 2 allowances held as of the deadline by owners or operators of facilities in Group 3 states plus banked allowances held in ''general'' accounts (*i.e.,* accounts not associated with a source), and the denominator of which would be the sum of the Group 3 states' 2022 control period variability limits proposed in this rule multiplied by the fraction of the 2021 ozone season, measured in days, occurring after the final rule's effective date. The quotient, or ratio (or a factor of 1.0000, if the quotient is less than 1.0000), would then be applied to the banked vintage year 2017–2020 Group 2 allowances in each such account to yield the number of banked allowances that would be made available to the holder of each such account for compliance under the Group 3 trading program for the 2021 control period. As discussed in section VIII.C.2, the proposed variability limits differ by year. EPA proposes to use the variability limits for the 2022 control period in the formula because 2022 is the first year in which the proposed budgets, and therefore the proposed variability limits, would reflect the full set of control technologies represented by the $1600 per ton cost level proposed to be consistent with addressing the Group 3 states' obligations under CAA section 110(a)(2)(D)(i)(I). Thus, the proposed conversion ratio formula would yield an effective starting bank of 21 percent of the aggregated 2022 Group 3 ozone season budgets for all covered states, or 21,022 allowances, adjusted to reflect any delay in implementation of the substantive increases in stringency established under the final rule beyond May 1, 2021.

EPA proposes that before carrying out the conversion of the bank of Group 2 allowances to Group 3 allowances, all general accountholders would be given an opportunity to temporarily transfer out of their general accounts any Group 2 allowances that they would prefer to retain for potential subsequent use in the Group 2 trading program. By 150 days after publication of a final rule in this rulemaking, EPA would create a common holding account for Group 2 allowances. General accountholders who hold Group 2 allowances could elect to transfer any number of their Group 2 allowances to this holding account by a deadline of 30 days after the creation of the Group 2 holding account. Group 2 allowances held in a facility compliance account could not be transferred directly to the holding account but could be transferred to a general account and then to the holding account. After the 30-day transfer window, EPA would implement a seven-day account freeze to execute the conversion. For the duration of the freeze, accountholders could not execute any transfers into or out of any general or facility compliance account that held Group 2 allowances at the beginning of the freeze. During this seven-day freeze, all Group 2 allowances held in any general or facility compliance account—but not the Group 2 allowances held in the common Group 2 holding account—would be converted to vintage year 2021 Group 3 allowances, per the conversion methodology described above. After the conversion is carried out, EPA would transfer all Group 2 allowances held in the common Group 2 holding account back to the general accounts from which they were transferred into the common Group 2 holding account.

EPA requests comment on the proposed conversion of banked 2017–2020 Group 2 allowances into a limited initial bank of Group 3 allowances. EPA also requests comment on whether the minimum conversion ratio should be a number greater than 1.0000, based on a formula that would provide an incentive to convert a minimum number of banked Group 2 allowances to Group 3 allowances, thereby preserving the stringency of the Group 2 trading program established in the CSAPR Update. Specifically, while the denominator of such a minimum ratio formula would be the same sum of the Group 3 states' variability limits under the Group 3 trading program that would be used in the primary conversion ratio formula, the numerator of the minimum ratio formula would be the total quantity of banked 2017–2020 Group 2 allowances attributable to sources in the states moving to the new Group 3 trading program (*i.e.,* the sum of the differences between the Group 3 states' budgets under the Group 2 trading program for the 2017–2020 ozone seasons and the total NO_X emissions from sources in those states in the 2017–2020 ozone seasons, plus the portion of the initial bank of allowances created for the Group 2 trading program that was attributable to the variability limits of those same states under the Group 2 trading program) (Comment C–32).

c. Recall of Group 2 Allowances Allocated for Control Periods After 2020

To maintain the previously established levels of stringency of the Group 2 trading program for the states and sources that remain subject to that program under this action, EPA is also proposing to recall CSAPR NO_X Ozone Season Group 2 allowances equivalent in amount and vintage to all vintage

year 2021–2024 CSAPR NO_X Ozone Season Group 2 allowances previously allocated to sources or non-source entities in Group 3 states. Specifically, 60 days after the date of **Federal Register** publication of the final action in this rulemaking, EPA would establish a 30-day window for the owners or operators of sources (or the representatives of non-source entities) in Group 3 states to transfer into their relevant compliance or general accounts the number of vintage year 2021–2024 CSAPR NO_X Ozone Season Group 2 allowances equal to the number that were allocated for each of these control periods (*i.e.,* 2021, 2022, 2023, and 2024) to all units at the source or to the non-unit entity. EPA intends to issue notifications and instructions to each accountholder to ensure the correct numbers of allowances of each vintage are returned. As noted in section VIII.C.7., EPA proposes not to record any allocations of Group 3 allowances to a source or other entity unless that source or entity has complied with the requirements to surrender previously allocated 2021–2024 Group 2 allowances. In addition, failure to comply with the recall provisions is proposed to be subject to potential enforcement as a violation of the Clean Air Act, in the same way that failure to hold sufficient allowances to cover emissions and failure to comply with the allowance surrender requirements of the assurance provisions in the regulations for all of the existing CSAPR trading programs is subject to such potential enforcement, with each allowance and each day of the control period constituting a separate violation.

EPA requests comment on the proposed approach for recalling 2021–2024 Group 2 allowances previously allocated to sources and other entities in Group 3 states (Comment C–33).

5. Compliance Deadlines

As discussed in section V.C. of this preamble, the proposed rule requires sources to comply with the revised respective NO_X emission budgets for the 2021–2024 ozone seasons (May 1 through September 30 of each year) in order to ensure that these necessary NO_X emission reductions are implemented to assist in downwind states' attainment and maintenance of the 2008 ozone NAAQS by the 2021 Serious area attainment date. Thus, under the new CSAPR NOx Ozone Season Group 3 Trading Program proposed by EPA in this rulemaking, the first control period is the 2021 ozone season (*i.e.* May 1, 2021, through September 30, 2021). This initial control period is coordinated with the attainment deadline for the 2008 standard, and the proposed rule includes provisions to ensure that all necessary reductions occur at sources within each individual state.

Under all CSAPR trading programs, compliance at the source level is achieved by each source surrendering by a compliance deadline—defined in the regulations at 40 CFR 97.802 as the ''allowance transfer deadline''—a number of allowances equal to the source's total emissions for the preceding ozone-season control period. For the control periods in 2021 and 2022, EPA proposes that the deadline by which sources must hold Group 3 allowances in their facility compliance accounts at least equal to their emissions is March 1 of the year following the control period. This deadline is the same as the current deadline for holding allowances under all the existing CSAPR trading programs. Under this coordinated deadline, March 1, 2022 is the proposed date by which Group 3 sources will be required to hold Group 3 allowances for compliance purposes of the 2021 ozone season control period. Likewise, the proposed date for purposes of the 2022 ozone season is March 1, 2023.

For control periods in 2023 and thereafter,[160] EPA proposes that the allowance transfer deadline for the Group 3 trading program—and for all the other CSAPR trading programs [161]—be moved from March 1 to June 1 of the year after the control period. The reason for the proposed change is to accommodate a proposed change in the methodology and schedule for allocating allowances to units from the new unit set-asides that would start with the 2023 control periods. Under that revised methodology, allowances from the new unit set-asides would be recorded in units' compliance accounts by May 1 of the year following the control period, and some additional period after that date is needed to allow for allowance purchases in case a source receives fewer allowances from the new unit set-aside than anticipated. Under the current regulations at 40 CFR 97.812, the deadline for recording second-round allocations from the new unit set-asides is February 15, two weeks before the March 1 allowance transfer deadline. EPA believes sources would have greater trading flexibility if this interval were extended to a full month, resulting in the proposed allowance transfer deadline of June 1. Extension of the allowance transfer deadline is not expected to have any impact on the achievement of the CSAPR trading programs' environmental objectives because it would not affect the quantities of allowances that sources will be required to hold as of the deadline or the total quantities of allowances that will be made available for compliance in advance of the deadline. Further discussion is provided in sections VIII.C.3.b. and VIII.C.8.

EPA requests comment on the proposed compliance deadlines (Comment C–34).

6. Monitoring and Reporting

Monitoring and reporting in accordance with the provisions of 40 CFR part 75 are required for all units subject to all the CSAPR trading programs, which includes all units covered under this proposed rule. Consistent with these existing requirements, EPA proposes that the monitoring system certification deadline by which monitors are installed and certified for compliance use under the CSAPR NOx Ozone Season Group 3 Trading Program generally will be May 1, 2021, the beginning of the first control period in this proposed rule, with potentially later deadlines for units that commence commercial operation less than 180 days before that date. Units already in compliance with monitoring system certification requirements for the Group 2 trading program would not have to undertake any additional activities to certify their monitoring systems for the Group 3 trading program. Similarly, EPA proposes that the first period in which emission reporting is required would be the quarter that includes May 1, 2021, (*i.e.,* the second quarter of the year that covers April, May, and June). These monitoring and reporting requirements and deadlines are analogous to the current deadlines under the CSAPR NOx Ozone Season Group 2 Trading Program.

Under 40 CFR part 75, a unit has several options for monitoring and reporting, including the use of a CEMS; an excepted monitoring methodology based in part on fuel-flow metering for certain gas- or oil-fired peaking units; low-mass emissions monitoring for certain non-coal-fired, low emitting

[160] As discussed in section VIII.C.8.b., EPA is also requesting comment on implementing the revised deadline starting with the 2021 control periods.

[161] As discussed in section VIII.C.8.b., in order to minimize unnecessary differences between the CSAPR trading programs and the similarly structured Texas SO_2 Trading Program, EPA is also proposing to revise the allowance transfer deadline under the Texas SO_2 Trading Program as of the 2023 control period. However, EPA is not proposing to revise the allowance transfer deadline under the Acid Rain Program for SO_2 emissions (which is February 29 in leap years and March 1 in other years).

units; or an alternative monitoring system approved by the Administrator through a petition process. In addition, sources can submit petitions to the Administrator for alternatives to individual monitoring, recordkeeping, and reporting requirements specified in 40 CFR part 75. Each CEMS must undergo rigorous initial certification testing and periodic quality assurance testing thereafter, including the use of relative accuracy test audits and 24-hour calibrations. In addition, when a monitoring system is not operating properly, standard substitute data procedures are applied and result in a conservative estimate of emissions for the period involved.

Further, 40 CFR part 75 requires electronic submission of quarterly emissions reports to the Administrator, in a format prescribed by the Administrator. The reports will contain all of the data required concerning ozone season NO_X emissions.

Units currently subject to the CSAPR NOx Ozone Season Group 2 Trading Program are required to monitor and report NO_X emissions in accordance with 40 CFR part 75, so covered sources in the Group 3 trading program will simply continue the same monitoring and reporting practices as required by 40 CFR part 75 under the Group 2 trading program.

7. Recordation of Allowances

EPA is proposing to establish a schedule for recording allocations of vintage-year 2021 CSAPR NO_X Ozone Season Group 3 allowances to ensure that affected sources are allocated vintage year 2021 allowances as soon as practicable and well before the 2021 ozone season compliance deadline (March 1, 2022). EPA is also proposing a schedule for recording allocations of vintage-year 2022 CSAPR NO_X Ozone Season Group 3 allowances that accommodates sources' expectation to receive these allowance allocations soon after the publication of this final rule while also ensuring that states have the opportunity to develop and submit to EPA SIP revisions concerning allocations of allowances for vintage year 2022 and later.

Specifically, allocations to existing units for the first control period outlined in this proposal (*i.e.* the 2021 ozone season) will be recorded no later than 120 days after the publication of the final rule in the **Federal Register**. EPA will also record allocation of vintage year 2022 allowances by this deadline for all units except those in states that provided to EPA, by 90 days after the publication of the final rule, a letter indicating an intent to submit a SIP revision that, if approved, would substitute state-determined allocations for the default allocations determined by EPA for the 2022 control period. EPA proposes that the deadline for states to submit to EPA such SIP revisions will be 180 days after publication of the final rule. If states that notified EPA of their intent to submit a SIP revision fail to submit such a SIP by the SIP submission deadline, EPA will record vintage year 2022 FIP allocations to those states no later than 210 days after the publication of the final rule. No later than one year after the publication of the final rule, EPA will record the SIP allocations of vintage year 2022 Group 3 allowances for states with approved SIP revisions. By this same one-year deadline, EPA will record the FIP allocations of vintage year 2022 Group 3 allowances for states whose SIP revisions are not approved by EPA.

The recordation deadline for vintage year 2021 allowances to existing units is anticipated to be approximately 7 months before the date by which sources are required to hold allowances sufficient to cover their emissions for that first control period (March 1, 2022, as discussed above). This schedule allows sources ample time to engage in allowance trading activities consistent with their preferred compliance strategies. EPA proposes to record vintage year 2023 and 2024 Group 3 allowance allocations to existing units by July 1, 2022, and vintage year 2025 and 2026 Group 3 allowance allocations by July 1, 2023. By July 1 of each year after 2023, EPA proposes to record Group 3 allowance allocations to existing units for the control period in the third year after the year of recordation. The proposed recordation deadlines would apply to recordation of both allocations based on the default proposed allocation provisions and allocations provided by states pursuant to approved SIP revisions.

As an exception to all of the recordation deadlines that would otherwise apply, EPA proposes not to record any allocations of Group 3 allowances to a source or other entity unless that source or entity has complied with the requirements to surrender previously allocated 2021–2024 Group 2 allowances. The surrender requirements are necessary to maintain the previously established levels of stringency of the Group 2 trading program for the states and sources that remain subject to that program under this proposal. EPA believes that conditioning the recordation of Group 3 allowances on compliance with the surrender requirements would spur compliance and would not impose an inappropriate burden on sources.

EPA notes that the proposal to generally record allocations to existing units three years in advance under the new Group 3 trading program represents a change from the historical recordation schedules for allocations to existing units under the other CSAPR trading programs, which have generally provided for such allocations to be recorded four years in advance. In this action, EPA is proposing to revise the recordation schedules under the other CSAPR trading programs, as well as the similarly structured Texas SO_2 Trading Program, so as to generally record allocations to existing units three years in advance. The proposed change would take effect with allocations for the 2025 control periods, which would be recorded by July 1, 2022, instead of by July 1, 2021. The reason for the proposed change is the discovery of a timing conflict in all the CSAPR trading programs between the requirement to record four years in advance and the separate provisions governing allocations to existing units that have ceased operations. Under those separate provisions, EPA is unable to determine whether some existing units are entitled to continue to receive their allowance allocations more than three years in advance, and thus EPA does not have the information necessary to record all the allocations four years in advance. Further discussion of this proposed revision to the schedule for recording allocations to existing units is provided in section VIII.C.8.a.

With respect to allocations of allowances from the new unit set-asides and Indian country new unit set-asides, for the 2021 and 2022 control periods, EPA proposes to record these allocations under the Group 3 trading program in two rounds, by August 1 of the control period (or 120 days after publication of the final rule in this action, if later) and by February 15 of the year following the control period. This schedule generally matches the recordation schedule for allocations of allowances from the analogous set-asides under the Group 2 trading program and the other CSAPR trading programs. Starting with the 2023 control period,[162] EPA proposes to adopt a new one-round process for determining allocations from the new unit set-asides and Indian country new unit set-asides, and consistent with that revised allocation process EPA proposes to

[162] As discussed in section VIII.C.8.b., EPA is also requesting comment on implementing the revised NUSA allocation process and deadlines starting with the 2021 control periods.

record all allocations from these set-asides as of May 1 in the year following the control period, in both the Group 3 trading program and the existing CSAPR trading programs, and both where the allocations are determined by EPA and where the allocations are provided by states pursuant to approved SIP revisions. Further discussion is provided in sections VIII.C.3.b. and VIII.C.8.b.

EPA requests comment on the proposed recordation deadlines (Comment C–35).

8. Proposed Conforming Revisions to Regulations for Existing Trading Programs

As discussed elsewhere in this preamble, in most respects, but not in every respect, the provisions of the proposed the CSAPR NO_X Ozone Season Group 3 Trading Program at 40 CFR part 97, subpart GGGGG, parallel the current provisions of the other CSAPR trading programs [163] at subparts AAAAA through EEEEE established in the CSAPR rulemaking and the CSAPR Update and, to a somewhat lesser extent, the provisions of the similarly structured Texas SO_2 Trading Program established at subpart FFFFF. This section discusses the proposed provisions of the new trading program that differ from the current provisions of the existing trading programs, beyond the provisions discussed in section VIII.C.4. addressing the transition to the new trading program. This section also discusses various minor proposed corrections and clarifications to the existing regulations.

To clarify and facilitate administration of the regulations for all of EPA's trading programs in 40 CFR part 97, and to maintain their parallel nature to the extent possible, EPA is proposing in this action to amend the regulations for the existing trading programs to reflect certain revisions as noted in the sections of this preamble describing the proposed new Group 3 trading program. Section VIII.C.8.a. addresses the proposed revisions discussed in section VIII.C.7. to address a timing conflict in the current regulations for all of the existing programs. Section VIII.C.8.b. addresses the proposed revisions discussed in sections VIII.C.3.b. and VIII.C.3.c. to simplify and improve the process for allocating allowances from the new unit set-asides under the existing CSAPR programs. Section VIII.C.8.c. addresses an additional minor revision to facilitate the reallocation of any incorrectly allocated allowances and also discusses proposed small corrections to the previously published amounts of certain new unit set-asides. It is EPA's intent for the regulations for all the trading programs in 40 CFR part 97 to continue to be as consistent in design as possible. For this reason, if the existing trading programs are not amended to include the revised provisions discussed in this section, EPA requests comment on instead maintaining the parallel nature of the various trading programs by finalizing the new trading program in subpart GGGGG not as proposed, but as modified to reflect the comparable current provisions of the existing CSAPR trading programs in subparts AAAAA through EEEEE without the revised provisions that are discussed in this section and reflected in the currently proposed regulatory text for new subpart GGGGG and discussed in this section (Comment C–36).

In this action, EPA is not reopening or requesting comment on the regulations for any of the existing trading programs in 40 CFR part 97, subparts AAAAA through FFFFF, except with respect to specific revisions to these subparts proposed in this section, as well as the revisions to the regulations for the Group 2 trading program discussed in section VIII.C.4. that address the transition from the Group 2 trading program to the Group 3 trading program.

a. Resolution of Timing Conflict Between Certain Existing Provisions

Consistent with the provisions of the new CSAPR trading program proposed in this action, EPA proposes to amend the regulations for the existing CSAPR trading programs and the Texas SO_2 Trading Program to resolve a timing conflict between the provisions that set deadlines for recordation of allowances allocated to existing units and the provisions that govern allocations of allowances to units that have ceased operation for the control periods in at least two consecutive years. The current recordation provisions in all of the trading programs generally require EPA to record allocations of allowances to existing units four years in advance of the control periods for which the allowances are being allocated. For example, on July 1, 2020, EPA recorded allocations to most existing units of allowances for use in the 2024 control periods for all the existing trading programs. However, other provisions of all the trading programs require EPA not to record allocations to existing units that do not operate for two consecutive control periods, starting with the fifth control period after the first control period in which the unit did not operate. For example, if a unit that would otherwise receive allocations as an existing unit does not operate in the 2019 and 2020 control periods, the unit will continue to receive allocations for the control periods in 2019 through 2023 but will no longer be entitled to receive allocations for control periods in 2024 and thereafter. These two sets of timing requirements are in conflict, as demonstrated by the examples just presented: as of the July 1, 2020 deadline to record allocations for the 2024 control periods, EPA could not yet know whether all units that did not operate in 2019 would resume operation later in 2020, and EPA therefore could not yet know whether all such units would be entitled to receive allocations for the 2024 control periods or not.[164]

To address the timing conflict described above, EPA is proposing to amend the regulations for each of the CSAPR trading programs and the Texas SO_2 Trading Program to generally require recordation of allowances allocated to existing units to take place three years rather than four years in advance of the control period for which allowances are being allocated. Returning to the examples above, if these proposed amendments had been in effect with respect to allocations for the control periods in 2024, EPA would not have been required to record allocations for the 2024 control period until July 1, 2021, by which time complete information on all units' operations in 2019 and 2020 will be available. Relatedly, for states that determine allocations of allowances to their sources under approved SIP revisions, EPA is proposing to amend the deadlines by which the states must submit the allocations to EPA for recordation to make the submissions due three years instead of four years before the applicable control period.[165]

[163] The existing CSAPR trading programs and their respective subparts of 40 CFR part 97 are: CSAPR NO_X Annual Trading Program (subpart AAAAA), CSAPR NO_X Ozone Season Group 1 Trading Program (subpart BBBBB), CSAPR SO_2 Group 1 Trading Program (subpart CCCCC), CSAPR SO_2 Group 2 Trading Program (subpart DDDDD), and CSAPR NO_X Ozone Season Group 2 Trading Program (subpart EEEEE).

[164] Because the 4-years-in-advance recordation schedule was phased in, the conflict with the provision addressing units that have ceased operation did not affect recordation activities under any CSAPR program until 2018. To date, EPA has addressed the conflict by deferring recordation of allocations to certain units past the applicable recordation deadlines until all information needed to determine whether the units are entitled to receive the allocations becomes available.

[165] Because states' deadlines for submission of SIP revisions under the CSAPR regulations are based on the deadlines by which they must submit their subsequent state-determined allowance allocations, in some circumstances the proposed revision to the deadline for submitting allowance

Continued

The amended recordation and submission schedules are proposed to be effective beginning with recordation of allocations for control periods in 2025 and would apply to EPA's schedule for recording not only the allocations determined by EPA under the federal CSAPR trading programs but also the allocations determined by states or EPA under state CSAPR trading programs that are similarly recorded by EPA. EPA believes these proposed amendments address the timing conflict in the existing trading program regulations in a manner that is as consistent as possible with the other provisions of the regulations, because while the amendments would alter the point in time at which trading program participants receive allowances, the amendments would not alter the quantities of allowances received by any participant in any of the existing trading programs. In contrast, the only simple alternatives for resolving the timing conflict—either shortening the period of non-operation that would cause a unit to lose its allocation from two years to one year or lengthening the period for which non-operating units would retain their allowance allocations from five years to six years—would cause changes in the amounts of allowances received by some trading program participants, and some stakeholders might view those changes as inequitable or undesirable for other policy reasons.

EPA requests comment on the proposed amendments to the deadlines for EPA to record allowance allocations and for states with approved CSAPR SIP revisions to submit their state-determined allowance allocations to EPA (Comment C–37). Further details on the specific regulatory provisions that would be affected by the proposed revisions are provided in section X.D. of the preamble.

b. Modifications to NUSA Provisions

Consistent with the provisions of the new CSAPR trading program proposed in this action for ozone season emissions of NO_X from sources in Group 3 states, EPA proposes to amend the regulations for the existing CSAPR trading programs governing allocations of allowances to units from NUSAs and Indian country NUSAs to reduce the potential for inequitable outcomes and to clarify and simplify the regulations.

The current regulations provide for a two-round allocation process. For purposes of the first round, a unit is generally eligible to receive allocations from the NUSA for its state regardless of when it commenced commercial operation, as long as either no allocation of allowances to the unit as an existing unit was previously determined [166] or the unit is no longer entitled to receive its previously determined allocation as an existing unit. The first-round allocations are calculated during the control period at issue and are proportional to the eligible units' emissions during the preceding control period, up to the amount of allowances available in the NUSA. EPA performs preliminary calculations and publishes a notice by June 1, provides an opportunity for objections, and then adjusts the calculations as necessary, issues a final notice, and records the allocations by August 1 of the control period.

If any allowances remain in the NUSA after the first round, EPA carries out a second round, for which eligibility is limited to units that commenced commercial operation in the year of the control period at issue or the preceding year. The second-round allocations are calculated early in the year after the year of the control period at issue (very shortly after the January 30 deadline for submission of emissions data for October through December) and are proportional to the positive differences, if any, between the eligible units' emissions during the control period at issue and the amounts of any allocations the units received in the first round, up to the remaining amount of allowances available in the NUSA. Any allowances remaining after the second round are allocated to existing units in the state in proportion to their previous allocations. EPA makes a preliminary identification of eligible units and publishes a notice by December 15, provides an opportunity for objections, and then performs the calculations, issues a final notice, and records the allocations by February 15 following the year of the control period, two weeks before the current March 1 allowance transfer deadline.

As indicated in the description above, the current procedures have the potential to produce inequitable results, where some units may receive allowances in the first round (based on their emissions in the preceding control period) that exceed the amounts needed to cover their emissions during the control period at issue, while other units that commenced operation more recently may not receive any allowances in either the first round (because the units had no covered emissions in the preceding control period) or the second round (because the NUSA may have been exhausted in the first round). Further, based on the experience of administering the two-round NUSA allocation process since 2015, EPA believes the current procedures are unnecessarily complex and cause confusion for some market participants.

To simplify the NUSA allocation process and eliminate the potential inequities noted, EPA proposes to amend the regulations for the existing CSAPR programs to replace the current two-round NUSA allocation process with a one-round process that would allocate allowances to all eligible units in proportion to their emissions in the control period at issue. The amended provisions are proposed to be effective beginning with NUSA allocations for the control periods in 2023. Under the proposed procedures, which would apply to both NUSAs and Indian country NUSAs, EPA would perform preliminary calculations and issue a notice by March 1 of the year after the control period at issue, one month after the January 30 deadline for submission of the required emission data. After providing an opportunity for objections, EPA would make any necessary adjustments, issue a final notice, and record the allowances by May 1. To accommodate this process, the proposed amendments would also revise the allowance transfer deadline (*i.e.,* the date by which all covered sources must hold allowances in their compliance accounts sufficient to cover their emissions during the preceding control period) from March 1 of the year following the control period to June 1. In coordination with the revised recordation deadlines, EPA also proposes to extend the deadline for states to submit to EPA their state-determined allocations for new units from July 1 in the year of the control period to April 1 in the year following the control period. Finally, although the Texas SO_2 Trading Program does not have NUSA provisions, in order to minimize unnecessary differences between the deadlines for analogous provisions in that program and the CSAPR programs, EPA also proposes to revise the Supplemental Allowance Pool recordation deadline and the allowance transfer deadline under the Texas SO_2 Trading Program to May 1 and June 1, respectively, of the year after the control period.

The proposed revisions to the NUSA allocation procedures would also allow for related simplification of the CSAPR trading programs' assurance provisions.

allocations would also effectively extend the deadline for such a SIP revision. *See, e.g.,* 40 CFR 52.38(a)(4)(ii), (a)(5)(vi).

[166] A determination that a unit should be allocated zero allowances is considered an allocation. *See, e.g.,* 40 CFR 97.402 (definition of ''allocate or allocation'').

Under the current assurance provisions, when emissions in a state for a given control period exceed the state's assurance level, if there are any units in the state that operated during the control period but that did not receive an actual allowance allocation either as an existing unit or from the NUSA, the regulations require EPA to publish a notice calling for the owners and operators of such units to submit certain information which EPA uses to determine imputed allowance allocations for the units. EPA then uses the imputed allowance allocations for these units, together with the actual allowance allocations for other units, to apportion responsibility for the assurance level exceedance among the owners and operators of all the state's units. If the proposed amendments to the NUSA allocation process are adopted, all units that have covered emissions during any control period would receive allocations either as an existing unit or from the NUSA, making the procedures for determining imputed allocations unnecessary. Accordingly, EPA proposes to simplify the assurance provisions for all of the existing CSAPR trading programs by removing the requirement for EPA to issue the additional notice just discussed, starting with the 2023 control periods.[167] EPA also proposes to revise the date as of which the ''common designated representative'' for a group of sources is determined for purposes of the assurance provisions from April 1 to July 1 of the year following the control period, preserving that date's current position of being one month after the allowance transfer deadline. This revision would maintain the existing coordination between these two regulatory deadlines and would apply to all the existing CSAPR trading programs as well as the Texas SO_2 Trading Program.

EPA is proposing to make the changes to the NUSA allocation provisions, assurance provisions, and related deadlines effective as of the 2023 control period. The 2023 control period is the first control period by which it will be possible for states to fully replace the FIP requirements that are proposed in this action with a SIP revision. In the event that any states prefer the existing two-round NUSA allocation process, they would be able to include such a process in their state rules for determining allowance allocations and submit those state rules to EPA for approval in a SIP revision. However, EPA believes it is essential that the same deadlines apply to all participants in a given CSAPR trading program, and that it is very desirable for the deadlines to be the same across all the CSAPR trading programs. EPA therefore proposes to apply all of the amended deadlines described above to all states and all sources participating in all of the CSAPR trading programs under both FIPs and SIPs as of the 2023 control periods.

EPA requests comment on the proposed revisions discussed above regarding the NUSA provisions and the associated revisions to the assurance provisions, the allowance transfer deadline, the deadline for EPA to record NUSA allocations and/or Supplemental Allowance Pool allocations, the deadline for states to submit state-determined allocations of allowances to new units, and the date for determination of a common designated representative for purposes of the assurance provisions. In addition to requesting comment on applying these revisions as of the 2023 control periods as proposed, EPA also specifically requests comment on whether it would be preferable to apply the revisions as of the 2021 control periods, in the new Group 3 trading program as well as the existing CSAPR trading programs and, to the extent applicable, the Texas SO_2 Trading Program (Comment C–38). Further details on the specific regulatory provisions that would be affected by the proposed revisions are provided in section X.D. of the preamble.

c. Minor Corrections and Clarifications to Existing Regulations

EPA is proposing two additional minor corrections and clarifications to the NUSA provisions in the existing CSAPR trading programs. The first minor revision addresses circumstances where allowances that are determined to have been allocated incorrectly are recalled and added to the NUSA for reallocation. The current regulations provide for the recalled allowances to be reallocated through the NUSA allocation process for the same control period for which the allowances were originally allocated incorrectly. Because some corrections may occur after the NUSA allocation process for a control period has already have been completed, EPA proposes to revise these provisions to also allow the recalled allowances to be reallocated as part of the NUSA allocation process for a subsequent control period.

The second minor proposed revision to the NUSA provisions concerns the specific numbers of allowances identified as the NUSA amounts for several states under the existing CSAPR programs established in the CSAPR rulemaking.[168] Following the promulgation of the CSAPR regulations in August 2011, EPA issued two rules revising the amounts of the emissions budgets, NUSAs, and Indian country NUSAs for several states.[169] Subsequent to these rule revisions, EPA recalculated the allocations to individual existing units and published a notice of data availability establishing the new allocations.[170] However, because of rounding differences, in certain instances the sum of the recalculated allocations to the individual units in a state plus the amounts identified in the regulations for the NUSA and Indian country NUSA for the state does not exactly equal the state budget.[171] In this action, EPA is proposing to adjust the amounts of the NUSAs identified in the regulations for control periods in future years up or down by the amount needed to eliminate the rounding differences. The sizes of the proposed NUSA adjustments range from 1 to 17 allowances. These revisions would not affect the amounts of any state emissions budgets.

EPA requests comment on the proposed corrections and clarifications described above. Further details on the specific regulatory provisions that would be affected by the proposed revisions are provided in section X.D. of the preamble (Comment C–39).

D. Submitting a SIP

States may replace a FIP with a SIP under the Clean Air Act at any time if the SIP is approved by EPA, *see* CAA section 110(c)(1)(B). EPA has established certain specialized provisions for replacing FIPs with SIPs within all of the CSAPR trading programs, including the use of so-called ''abbreviated SIPs'' and ''full SIPs,'' *see* 40 CFR 52.38(a)(4)-(5) and (b)(4), (5), (8), and (9); 40 CFR 52.39(e), (f), (h), and (i). Under the proposed new or amended FIPs for the 12 states whose sources

[167] There are currently no analogous provisions in the Texas SO_2 Trading Program.

[168] This proposed revision affects the CSAPR NO_X Annual, NO_X Ozone Season Group 1, SO_2 Group 1, and SO_2 Group 2 trading programs established in the CSAPR rulemaking but does not affect the CSAPR NO_X Ozone Season Group 2 program established in the CSAPR Update rulemaking.

[169] *See* 77 FR 10324 (February 21, 2012); 77 FR 34830 (June 12, 2012).

[170] *See* 79 FR 71674 (December 3, 2014).

[171] To date, EPA has addressed the rounding differences through the NUSA administration process by allocating whatever amounts of allowances remain in the states' budgets after allocations to existing units instead of allocating the specific amounts of allowances stated as the amounts of the states' NUSAs in the regulations. Thus, the proposed amendments would simply clarify the regulations and bring them into conformance with current practice.

would participate in the new CSAPR NOx Ozone Season Group 3 Trading Program, ''abbreviated'' and ''full'' SIP options continue to be available. An ''abbreviated SIP'' allows a state to submit a SIP revision that would modify allocation provisions in the ozone season NO_X trading program that is then incorporated into the FIP to allow the state to substitute its own allocation provisions. A ''full SIP'' allows a state to adopt a trading program meeting certain requirements that would allow sources in the state to continue to use the EPA-administered trading program through an approved SIP revision, rather than a FIP. In addition, as under the CSAPR and the CSAPR Update, EPA proposes to provide states with an opportunity to adopt state-determined allowance allocations for existing units for the second control period under this rule—in this case, the 2022 control period—through streamlined SIP revisions. *See* 76 FR 48326–48332 for additional discussion on full and abbreviated SIP options and 40 CFR 52.38(b).

1. SIP Option To Modify 2022 Allocations

As under the CSAPR and the CSAPR Update, EPA proposes to allow a state to submit a SIP revision establishing allowance allocations for existing units in the state for the second control period of the new requirements, 2022, to replace the EPA-determined default allocations. The process would be the same process used at the start of other CSAPR trading programs but with slightly longer deadlines, *i.e.,* a state would submit a letter to EPA within 90 days after publication of the final rule indicating its intent to submit a complete SIP revision within 180 days after publication of the final rule. The SIP would provide in an EPA-prescribed format a list of existing units and their allocations for the 2022 control period. If a state does not submit a letter of intent to submit a SIP revision, the EPA-determined default allocations would be recorded by 120 days after publication of the final rule. If a state submits a timely letter of intent but fails to submit a SIP revision, the EPA-determined default allocations would be recorded by 30 days after the SIP submittal deadline. If a state submits a timely letter of intent followed by a timely SIP revision that is approved, the approved SIP allocations would be recorded by one year after publication of the final rule.

2. SIP Option To Modify Allocations in 2023 and Beyond

For the 2023 control period and later, EPA proposes that states in the CSAPR NO_X Ozone Season Group 3 Trading Program can modify the EPA-determined default allocations with an approved SIP revision. EPA proposes that the SIP submittal deadline be December 1, 2021. The deadline for states to submit state-determined allocations for 2023 and 2024 under an approved SIP would be June 1, 2022, and the deadline for EPA to record those allocations would be July 1, 2022. Under the proposed new deadlines, a state could submit a SIP revision for 2025 and beyond control periods by December 1, 2022, with state allocations for the 2025 and 2026 control periods due June 1, 2023, and EPA recordation of the allocations by July 1, 2023. For the 2023 control period and later, SIPs could be full or abbreviated SIPs. As discussed in section VIII.F.3. below, states would also have the option to expand applicability to include EGUs between 15 MWe and 25 MWe or, in the case of states subject to the NO_X SIP Call, large non-EGU boilers and combustion turbines. Inclusion of the large non-EGUs would serve as a mechanism to address the state's outstanding regulatory obligations under the NO_X SIP Call with respect to those sources, and the state would be allowed to allocate a defined quantity of additional Group 3 allowances because of the expanded set of sources. See above and 76 FR 48326–48332 for additional discussion on full and abbreviated SIP options and 40 CFR 52.38(b).

3. SIP Revisions that Do Not Use the New Group 3 Trading Program

States can submit SIP revisions to replace the FIP that achieve the necessary emission reductions but do not use the CSAPR NO_X Ozone Season Group 3 Trading Program. For a transport SIP revision that does not use the CSAPR NO_X Ozone Season Group 3 Trading Program, EPA would evaluate the transport SIP based on the particular control strategies selected and whether the strategies as a whole provide adequate and enforceable provisions ensuring that the necessary emission reductions (*i.e.,* reductions equal to or greater than what the Group 3 trading program will achieve) will be achieved. In order to best ensure its approvability, the SIP revision should include the following general elements: (1) A comprehensive baseline 2021 statewide NO_X emission inventory (which includes existing control requirements), which should be consistent with the 2021 emission inventory that EPA would use when finalizing this rulemaking to calculate the required state budget (unless the state can explain the discrepancy); (2) a list and description of control measures to satisfy the state emission reduction obligation and a demonstration showing when each measure would be in place to meet the 2021 and successive control periods; (3) fully-adopted state rules providing for such NO_X controls during the ozone season; (4) for EGUs greater than 25 MWe, 40 CFR part 75 monitoring, and for other units, monitoring and reporting procedures sufficient to demonstrate that sources are complying with the SIP (*see* 40 CFR part 51 subpart K (''source surveillance'' requirements)); and (5) a projected inventory demonstrating that state measures along with federal measures will achieve the necessary emission reductions in time to meet the 2021 compliance deadline. The SIPs must meet procedural requirements under the Act, such as the requirements for public hearing, be adopted by the appropriate state board or authority, and establish by a practically enforceable regulation or permit a schedule and date for each affected source or source category to achieve compliance. Once the state has made a SIP submission, EPA will evaluate the submission(s) for completeness. EPA's criteria for determining completeness of a SIP submission are codified at 40 CFR part 51 appendix V.

For further information on replacing a FIP with a SIP, see the discussion in the final CSAPR rulemaking (76 FR 48326).

4. Submitting a SIP To Participate in the New Group 3 Trading Program for States Not Included

Finally, EPA is also proposing to allow a state whose sources are required to participate in the CSAPR NOx Ozone Season Group 1 Trading Program (*i.e.,* Georgia) or a state whose sources are required to continue to participate in the CSAPR NOx Ozone Season Group 2 Trading Program (as proposed, Alabama, Arkansas, Iowa, Kansas, Mississippi, Missouri, Oklahoma, Tennessee, Texas, and Wisconsin) to submit a SIP revision to require its sources to participate instead in the new Group 3 trading program. A similar option was made available to Georgia in the CSAPR Update (with respect to the Group 2 trading program) to address possible concerns expressed by some commenters that if sources in Georgia were not allowed to trade with sources in other states, the allowances issued to the sources in Georgia would otherwise

be of limited use. *See* 40 CFR 52.38(b)(6). The proposed option in this rulemaking, similar to the option created in the CSAPR Update, would require the state to adopt into its SIP a more stringent budget reflecting emission levels at higher dollar per ton emission reduction costs comparable to the dollar per ton emission reduction costs used to establish the budgets for states whose sources are proposed to be subject to the CSAPR NO_X Ozone Season Group 3 Trading Program described in this proposal.

E. Title V Permitting

This proposed rule, like the CSAPR and the CSAPR Update, does not establish any permitting requirements independent of those under Title V of the CAA and the regulations implementing Title V, 40 CFR parts 70 and 71.[172] All major stationary sources of air pollution and certain other sources are required to apply for title V operating permits that include emission limitations and other conditions as necessary to assure compliance with the applicable requirements of the CAA, including the requirements of the applicable SIP. CAA sections 502(a) and 504(a), 42 U.S.C. 7661a(a) and 7661c(a). The ''applicable requirements'' that must be addressed in title V permits are defined in the title V regulations (40 CFR 70.2 and 71.2 (definition of ''applicable requirement'')).

EPA anticipates that, given the nature of the units subject to this proposed rule and given that all of the units proposed to be covered here are already subject to the CSAPR Update, most if not all of the sources at which the units are located are already subject to title V permitting requirements. For sources subject to title V, the interstate transport requirements for the 2008 ozone NAAQS that are applicable to them under the proposed new or amended FIPs would be ''applicable requirements'' under title V and therefore must be addressed in the title V permits. For example, requirements concerning designated representatives, monitoring, reporting, and recordkeeping, the requirement to hold allowances covering emissions, the assurance provisions, and liability are ''applicable requirements'' that must be addressed in the permits.

Title V of the CAA establishes the basic requirements for state title V permitting programs, including, among other things, provisions governing permit applications, permit content, and permit revisions that address applicable requirements under final FIPs in a manner that provides the flexibility necessary to implement market-based programs such as the trading programs established by the CSAPR and the CSAPR Update and this proposed rule. 42 U.S.C. 7661a(b); 40 CFR 70.6(a)(8) & (10); 40 CFR 71.6(a)(8) & (10).

In the CSAPR and the CSAPR Update, EPA established standard requirements governing how sources covered by that rule would comply with title V and its regulations.[173] 40 CFR 97.506(d) and 97.806(d). For any new or existing sources under this proposed rule establishing the Group 3 program, identical title V compliance provisions would apply, just as they would have in the CSAPR NOx Ozone Season Group 2 Trading Program. For example, the title V regulations provide that a permit issued under title V must include ''[a] provision stating that no permit revision shall be required under any approved . . . emissions trading and other similar programs or processes for changes that are provided for in the permit.'' 40 CFR 70.6(a)(8) and 71.6(a)(8). Consistent with these provisions in the title V regulations, in the CSAPR and the CSAPR Update, EPA included a provision stating that no permit revision is necessary for the allocation, holding, deduction, or transfer of allowances. 40 CFR 97.506(d)(1) and 97.806(d)(1). This provision is also included in each title V permit for an affected source. This proposed rule maintains the approach taken under the CSAPR and the CSAPR Update that allows allowances to be traded (or allocated, held, or deducted) without a revision to the title V permit of any of the sources involved.

Similarly, this proposed rule would also continue to support the means by which a source in a CSAPR trading program can use the title V minor modification procedure to change its approach for monitoring and reporting emissions, in certain circumstances. Specifically, sources may use the minor modification procedure so long as the new monitoring and reporting approach is one of the prior-approved approaches under the CSAPR and the CSAPR Update (*i.e.,* approaches using a continuous emission monitoring system under subparts B and H of Part 75, an excepted monitoring system under appendices D and E to Part 75, a low mass emissions excepted monitoring methodology under 40 CFR 75.19, or an alternative monitoring system under subpart E of part 75), and the permit already includes a description of the new monitoring and reporting approach to be used. *See* 40 CFR 97.506(d)(2) and 97.806(d)(2); 40 CFR 70.7(e)(2)(i)(B) and 40 CFR 71.7(e)(1)(i)(B). As described in EPA's 2015 guidance, the Agency suggests in its template that sources may comply with this requirement by including a table of all of the approved monitoring and reporting approaches under the CSAPR and CSAPR Update trading programs in which the source is required to participate, and the applicable requirements governing each of those approaches. Inclusion of the table in a source's title V permit therefore allows a covered unit that seeks to change or add to its chosen monitoring and recordkeeping approach to easily comply with the regulations governing the use of the title V minor modification procedure.

Under the CSAPR and the CSAPR Update, in order to employ a monitoring or reporting approach different from the prior-approved approaches discussed previously, unit owners and operators must submit monitoring system certification applications to EPA establishing the monitoring and reporting approach actually to be used by the unit, or, if the owners and operators choose to employ an alternative monitoring system, to submit petitions for that alternative to EPA. These applications and petitions are subject to EPA review and approval to ensure consistency in monitoring and reporting among all trading program participants. EPA's responses to any petitions for alternative monitoring systems or for alternatives to specific monitoring or reporting requirements are posted on EPA's website.[174] EPA maintains the same approach in this proposed rule.

Consistent with EPA's approach under the CSAPR and the CSAPR Update, the applicable requirements resulting from the proposed new and amended FIPs, if finalized, generally would have to be incorporated into affected sources' existing title V permits either pursuant to the provisions for reopening for cause (40 CFR 70.7(f) and 71.7(f)) or the standard permit renewal provisions (40 CFR 70.7(c) and 71.7(c)).[175] For sources newly subject to

[172] Part 70 addresses requirements for state title V programs, and Part 71 governs the federal title V program.

[173] EPA has also issued a guidance document and template that includes instructions describing how to incorporate the applicable requirements into a source's Title V permit. *https://www3.epa.gov/airtransport/CSAPR/pdfs/CSAPR_Title_V_Permit_Guidance.pdf.*

[174] *https://www.epa.gov/airmarkets/part-75-petition-responses.*

[175] A permit is reopened for cause if any new applicable requirements (such as those under a FIP) become applicable to an affected source with a remaining permit term of 3 or more years. If the remaining permit term is less than 3 years, such new applicable requirements will be added to the permit during permit renewal. *See* 40 CFR 70.7(f)(1)(I) and 71.7(f)(1)(I).

title V that are affected sources under the proposed FIPs, the initial title V permit issued pursuant to 40 CFR 70.7(a) should address the final FIP requirements.

As was the case in the CSAPR and the CSAPR Update, the proposed new and amended FIPs impose no independent permitting requirements and the title V permitting process will impose no additional burden on sources already required to be permitted under title V and on permitting authorities.

F. Relationship to Other Emission Trading and Ozone Transport Programs

1. Existing Trading Programs

This proposed rule if adopted would end the requirements for sources in certain states to participate in the existing CSAPR NOx Ozone Season Group 2 Trading Program after the 2020 control period and require those same sources instead to participate in a new CSAPR NOx Ozone Season Group 3 Trading Program with more stringent emissions budgets. As discussed in section VIII.C.4. above, the proposal lays out certain requirements associated with this transition, including provisions to accommodate an effective date sometime after the start of the 2021 ozone season, conversion of certain banked 2017–2020 Group 2 allowances into a limited quantity of Group 3 allowances available for use in the new Group 3 trading program, and the recall of 2021–2024 Group 2 allowances previously allocated to the sources in Group 3 states. In addition, in section VIII.C.8. of this document, EPA describes certain features of the new Group 3 trading program that differ from the current features of the other CSAPR trading programs and that EPA proposes to adopt as revisions to the other CSAPR trading programs as well. A subset of those new features are also proposed to be adopted as revisions to the similarly structured Texas SO_2 Trading Program. Beyond these items, nothing else in this rule affects any requirements for any source under the CSAPR NO_X Annual, SO_2 Group 1 or Group 2, or NO_X Ozone Season Group 1 or Group 2 trading programs or the Texas SO_2 Trading Program. These trading programs all remain in place and will continue to be administered by EPA.

2. Title IV Interactions

This proposed rule if adopted would not affect any Acid Rain Program requirements. Any Title IV sources that are subject to provisions of this proposed rule would still need to continue to comply with all Acid Rain provisions. Acid Rain Program SO_2 and NO_X requirements are established independently in Title IV of the Clean Air Act and will continue to apply independently of this proposed rule's provisions. Acid Rain sources will still be required to comply with Title IV requirements, including the requirement to hold Title IV allowances to cover SO_2 emissions at the end of a compliance year.

3. NO_X SIP Call Interactions

States affected by both the NO_X SIP Call and any final CSAPR ozone season requirements for the 2008 NAAQS will be required to comply with the requirements of both rules. This proposed rule requires NO_X ozone season emission reductions from EGUs larger than 25 MWe in many NO_X SIP Call states and at greater stringency than required by the NO_X SIP Call. Therefore, this proposed rule would satisfy the requirements of the NO_X SIP Call for these large EGUs.

The NO_X SIP Call states used the NO_X Budget Trading Program to comply with the NO_X SIP Call requirements for EGUs serving generators with a nameplate capacity greater than 25 MWe and large non-EGU boilers and combustion turbines with a maximum design heat input greater than 250 mmBtu/hr. (In some states, EGUs serving a generator with a nameplate capacity equal to or smaller than 25 MWe were also part of the NO_X Budget Trading Program as a carryover from the Ozone Transport Commission NO_X Budget Program.) When EPA promulgated CAIR, it allowed states to modify that trading program and include all NO_X Budget Trading Program units in the CAIR NO_X Ozone Season Trading Program as a way to continue to meet the requirements of the NO_X SIP Call for these sources.

In the CSAPR, however, EPA allowed states to expand applicability of the trading program to EGUs serving a generator with a nameplate capacity equal to or less than 25 MWe but did not allow the expansion of applicability to include large non-EGU sources. The reason for excluding large non-EGU sources was largely that emissions from these sources were generally much lower than the budget amount and there was concern that surplus allowances created as a result of an overestimation of baseline emissions and subsequent shutdowns (since 1999 when the NO_X SIP Call was promulgated) would prevent needed reductions by the EGUs to address significant contribution to downwind air quality impacts.

Since then, states have had to find appropriate ways to continue to show compliance with the NO_X SIP Call, particularly for large non-EGUs. Some states that included such sources in CAIR are still working to find suitable solutions.

Therefore, as in the CSAPR Update, EPA is proposing to allow any NO_X SIP Call state affected by this proposed rule to voluntarily submit a SIP revision at a budget level that is environmentally neutral to address the state's NO_X SIP Call requirement for ozone season NO_X reductions from large non-EGUs. The SIP revision could include provisions to expand the applicability of the CSAPR NO_X Ozone Season Group 3 Trading Program to include all NO_X Budget Trading Program units. Analysis shows that these units (mainly large non-EGU boilers, combustion turbines, and combined cycle units with a maximum design heat input greater than 250 mmBtu/hr) continue to emit well below their portion of the NO_X SIP Call budget. In order to ensure that the necessary amount of EGU emission reductions occur for this proposed rule, the corresponding state ozone-season emissions budget amount could be increased by the lesser of the highest ozone season NO_X emissions (in the last 3 years) from those units or the relevant non-EGU budget under the NO_X SIP Call, and this small group of non-EGUs could participate in the CSAPR NO_X Ozone Season Group 3 Trading Program. The environmental impact would be neutral using this approach, and hourly reporting of emissions under 40 CFR part 75 would continue. This approach would address requests by states for help in determining an appropriate way to address the continuing NO_X SIP Call requirement for large boilers and turbines. EPA proposes that if this SIP-based option is finalized, the variability limits established for EGUs under the CSAPR NO_X Ozone Season Group 3 Trading Program would remain unchanged despite the inclusion of these non-EGUs. The assurance provisions established for the CSAPR NO_X Ozone Season Trading Program would apply to EGUs, and emissions from non-EGUs would not affect the assurance levels.

The NO_X SIP Call generally requires that states choosing to rely on large EGUs and large non-EGU boilers and turbines for meeting NO_X SIP Call emission reduction requirements must establish a NO_X mass emissions cap on each source and require 40 CFR part 75, subpart H monitoring or alternative monitoring. As an alternative to source-by-source NO_X mass emission caps, a state may impose NO_X emission rate limits on each source and use maximum operating capacity for estimating NO_X mass emissions or may rely on other requirements that the state demonstrates

to be equivalent to either the NO_X mass emission caps or the NO_X emission rate limits that assume maximum operating capacity. Collectively, the caps or their alternatives cannot exceed the portion of the state budget for those sources. *See* 40 CFR 51.121(f)(2) and (i)(4). If EPA were to allow a state to expand the applicability of this proposed rule to include all the NO_X Budget Trading Program units in the CSAPR NO_X Ozone Season Group 3 Trading Program, the cap requirement would be met through the new budget and the monitoring requirement would be met through the trading program provisions, which require part 75 monitoring. Whether the option for states to include NO_X Budget Trading Program units in the CSAPR NO_X Ozone Season Group 3 Trading Program through SIPs is finalized or not, EPA will work with states to ensure that NO_X SIP Call obligations continue to be met. EPA requests comment on whether to authorize the states' voluntary inclusion of NO_X SIP Call non-EGUs in the proposed Group 3 trading program (Comment C–40).

IX. Costs, Benefits, and Other Impacts of the Proposed Rule

This proposed action is expected to reduce concentrations of both ground-level ozone and fine particles ($PM_{2.5}$) (see discussion in Chapter 3 of the Regulatory Impact Analysis (RIA)). EPA historically has used conclusions of the most recent Integrated Science Assessment (ISA) to inform its approach for quantifying air pollution-attributable health, welfare, and environmental impacts associated with that pollutant. There is a separate ISA for each of the criteria pollutants. The ISA synthesizes the epidemiologic, controlled human exposure and experimental evidence ''. . . useful in indicating the kind and extent of identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in ambient air.''

The ISA uses a weight of evidence approach to assess the extent the evidence supports conclusions about the likelihood that a given criteria pollutant causes a given health outcome. EPA generally estimates the number and economic value of the effects for which the ISA identifies the pollutant as having ''causal'' or ''likely to be causal'' relationship. The endpoints for which the 2020 final Ozone ISA [176] and the 2019 final PM ISA [177] identified as being causal or likely causal differed in some cases from the endpoints for which those pollutants were identified as being causal or likely causal in the Ozone and PM ISAs completed for the previous NAAQS reviews (see Tables 5–5 and 5–6 in Chapter 5 of the RIA). EPA traditionally uses the ISAs' characterizations of the health and ecological literature to identify individual studies that may be of sufficient quality for use in supporting PM or ozone benefits analysis.

When updating its approach for quantifying the benefits of changes in $PM_{2.5}$ and Ozone, the Agency will incorporate evidence reported in these two recently completed ISAs and account for forthcoming recommendations from the Science Advisory Board on this issue. When updating the evidence for a given endpoint, EPA will consider the extent to which there is a causal relationship, whether suitable epidemiologic studies exist to allow quantification of concentration response functions, and whether there are robust economic approaches for estimating the value of the impact of reducing human exposure to the pollutant. Carefully and systematically reviewing the full breadth of this information requires significant time and resources. This process is still underway and will not be completed in time for this proposal. EPA intends to update its quantitative methods for estimating the number and economic value of $PM_{2.5}$ and ozone health effects in time for publication as part of the final rule. [178] However, to provide perspective regarding the scope of the estimated benefits, Appendix 5B of the RIA illustrates the potential health effects associated with the change in $PM_{2.5}$ and ozone concentrations as calculated using methods developed prior to the 2019 p.m. ISA and 2020 Ozone ISA. The values of these estimated benefits are not reflected in the estimated net benefits reported in Tables IX.4 and IX.5 below.

EPA estimated the compliance costs, emissions changes, and climate benefits that may result from the proposed rule for the years of analysis, 2021 to 2025. The estimated costs and climate benefits are presented in detail in the RIA accompanying this proposed action. EPA notes that the estimated compliance costs and climate benefits are directly associated with turning on or fully operating existing SCRs to achieve the assigned NOx emission rate, and installing state-of-the-art combustion controls. The estimated compliance costs and climate benefits also result from a small amount of generation shifting as the power system adjusts to the proposed regulatory requirements.

EPA analyzed this action's proposed emission budgets, which were developed using uniform control stringency represented by $1,600 per ton of NO_X (2016$), as well as a more and a less stringent alternative. The more and less stringent alternatives differ in that they set different NO_X ozone season emission budgets for the affected EGUs. The less stringent alternative uses emission budgets that were developed using uniform control stringency represented by $500 per ton of NO_X (2016$). The more stringent alternative uses emission budgets that were developed using uniform control stringency represented by $9,600 per ton of NO_X (2016$). Table IX.1 provides the projected 2021 and 2025 EGU emissions reductions for the evaluated regulatory control alternatives. For additional information on emissions changes in each year from 2021 through 2025, see Table 4.5 in Chapter 4 of the RIA.

[176] U.S. Environmental Protection Agency (U.S. EPA). 2020. Integrated Science Assessment (ISA) for Ozone and Related Photochemical Oxidants (Final Report). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–20/012, 2020.

[177] U.S. Environmental Protection Agency (U.S. EPA). 2019. Integrated Science Assessment (ISA) for Particulate Matter (Final Report, 2019). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–19/188, 2019.

[178] In particular, the 2020 Ozone ISA concludes that the currently available evidence for cardiovascular effects and total mortality is suggestive of, but not sufficient to infer, a causal relationship with short-term (as well as long-term) ozone exposures. As such, EPA is in the process of recalibrating its benefits estimates to quantify only premature mortality from respiratory causes (*i.e.,* non-respiratory causes of premature mortality associated with ozone exposure would no longer be estimated). Similarly, the 2019 PM ISA concludes that the currently available evidence for nervous system effects and cancer is likely to be a causal relationship with long term $PM_{2.5}$ exposure. EPA is in the process of evaluating nervous system effects from long term $PM_{2.5}$ exposure and evaluating the relationship between long term $PM_{2.5}$ exposure and cancer. Furthermore, the ISA references a variety of additional studies for consideration in quantifying the health implications of changes in $PM_{2.5}$ and ozone exposure. EPA is updating the estimates for several other health endpoints to account for this new scientific literature.

TABLE IX.1—ESTIMATED 2021 AND 2025 [a] EGU EMISSIONS REDUCTIONS IN THE 12 STATES OF NO_X, SO_2, AND CO_2 AND MORE AND LESS STRINGENT ALTERNATIVES

[Tons] [b c]

	Proposal	More stringent alternative	Less stringent alternative
2021:			
NO_X (annual)	17,000	17,000	2,000
NO_X (ozone season)	17,000	17,000	2,000
SO_2 (annual)	.....	.....	.....
CO_2 (annual, thousand metric)	.....	.....	.....
2025:			
NO_X (annual)	27,000	41,000	2,000
NO_X (ozone season)	21,000	35,000	2,000
SO_2 (annual)	.....	.....	.....
CO_2 (annual, thousand metric)	4,000	10,000	3,000

[a] The 2021 emissions reductions estimates are based on IPM projections for 2021 and engineering analysis. For more information, see the Ozone Transport Policy Analysis TSD.
[b] NO_X emissions are reported in English (short) tons; CO_2 is reported in metric tons.
[c] In addition to no annual SO_2 emissions reductions as shown in the table above, there are no annual direct $PM_{2.5}$ emissions reductions.

EPA analyzed ozone-season NO_X emission reductions and the associated costs to the power sector of implementing the EGU NO_X ozone-season emissions budgets in each of the 12 states using the Integrated Planning Model (IPM) and its underlying data and inputs. The estimates of the changes in the cost of supplying electricity for the regulatory control alternatives are presented in Table IX.2.

TABLE IX.2—NATIONAL COMPLIANCE COST ESTIMATES (Millions of 2016$) FOR THE REGULATORY CONTROL ALTERNATIVES

	Proposal	More-stringent alternative	Less-stringent alternative
2021–2025 (Annualized)	19.4	80.6	1.6
2021 (Annual)	20.9	37.2	3.8
2025 (Annual)	6.3	132.2	−12.0

The *2021–2025 (Annualized)* row reflects total estimated annual compliance costs levelized over the period 2021 through 2025, discounted using a 4.25 real discount rate. The *2021 (Annual)* and *2025 (Annual)* rows reflect annual estimates in each of those years.

EPA estimated the climate benefits for this proposed rulemaking using a measure of the domestic social cost of carbon (SC–CO_2). Table IX.3 shows the estimated monetary value of the estimated changes in CO_2 emissions in 2021 and 2025 for this proposed action, the more stringent alternative, and the less stringent alternative.

TABLE IX.3—ESTIMATED DOMESTIC CLIMATE BENEFITS FROM CHANGES IN CO_2 EMISSIONS FOR SELECTED YEARS

[Millions of 2016$]

Regulatory option	Year	3% Discount rate	7% Discount rate
Proposal	2021	0.3	0.0
	2025	32.9	5.4
More Stringent Alternative	2021	0.8	0.1
	2025	71.5	11.7
Less Stringent Alternative	2021	0.2	0.0
	2025	25.5	4.2

In Table IX.4, EPA presents a summary of the benefits, costs, and net benefits of this proposed action and the more and less stringent alternatives for 2021. Table IX.5 presents a summary of these impacts for this proposed action and the more and less stringent alternatives for 2025. EPA represents the present annual value of non-monetized benefits from ozone, $PM_{2.5}$ and NO_2 reductions as a B. The annual value of B will differ across discount rates, year of analysis, and the regulatory alternatives analyzed. Further discussion of the non-monetized health and welfare benefits from these pollutants is found in Chapter 5 of the RIA.

TABLE IX.4—BENEFITS, COSTS, AND NET BENEFITS OF THE PROPOSAL AND MORE AND LESS STRINGENT ALTERNATIVES FOR 2021 FOR THE U.S.

[Millions of 2016$] [a b c,d]

Discount rate	Benefits	Costs	Net benefits
Proposal:			
3%	0.31 + B	21	−21 + B
7%	0.05 + B		−21 + B
More Stringent Alternative:			
3%	0.80 + B	37	−36 + B
7%	0.12 +B		−37 + B
Less Stringent Alternative:			
3%	0.17 + B	4	−4 + B
7%	0.03 + B		−4 + B

[a] EPA focused results to provide a snapshot of costs and benefits in 2021, using the best available information to approximate social costs and social benefits recognizing uncertainties and limitations in those estimates.

[b] Benefits ranges represent discounting of climate benefits at a real discount rate of 3 percent and 7 percent. Climate benefits are based on changes (reductions) in CO_2 emissions. The costs presented in this table are 2021 annual estimates for each alternative analyzed.

[c] All costs and benefits are rounded to two significant figures; rows may not appear to add correctly.

[d] B is the sum of all unquantified ozone, $PM_{2.5}$, and NO_2 benefits. The annual value of B will differ across discount rates, year of analysis, and the regulatory alternatives analyzed. While EPA did not estimate these benefits in the RIA, Appendix 5B in the RIA presents $PM_{2.5}$ and ozone estimates quantified using methods consistent with the previously published ISAs to provide information regarding the potential magnitude of the benefits of this proposed rule.

TABLE IX.5—BENEFITS, COSTS, AND NET BENEFITS OF THE PROPOSAL AND MORE AND LESS STRINGENT ALTERNATIVES FOR 2025 FOR THE U.S.

[Millions of 2016$] [a b c d]

Discount rate	Benefits	Costs	Net benefits
Proposal:			
3%	33 + B	6	27 + B
7%	5.4 + B		−0.9 + B
More Stringent Alternative:			
3%	71.5 + B	132	−61 + B
7%	11.7 + B		−120 + B
Less Stringent Alternative:			
3%	25 + B	−12	37 + B
7%	4.2 + B		16 + B

[a] EPA focused results to provide a snapshot of costs and benefits in 2025, using the best available information to approximate social costs and social benefits recognizing uncertainties and limitations in those estimates.

[b] Benefits ranges represent discounting of climate benefits at a real discount rate of 3 percent and 7 percent. Climate benefits are based on changes (reductions) in CO_2 emissions. The costs presented in this table are 2025 annual estimates for each alternative analyzed.

[c] All costs and benefits are rounded to two significant figures; rows may not appear to add correctly.

[d] B is the sum of all unquantified ozone, $PM_{2.5}$, and NO_2 benefits. The annual value of B will differ across discount rates, year of analysis, and the regulatory alternatives analyzed. While EPA did not estimate these benefits in the RIA, Appendix 5B in the RIA presents $PM_{2.5}$ and ozone estimates quantified using methods consistent with the previously published ISAs to provide information regarding the potential magnitude of the benefits of this proposed rule.

In addition, Table IX–6 presents estimates of the present value (PV) of the benefits and costs and the equivalent annualized value (EAV), an estimate of the annualized value of the net benefits consistent with the present value, over the five-year period of 2021 to 2025. The estimates of the PV and EAV are calculated using discount rates of 3 and 7 percent as directed by OMB's Circular A–4 and are presented in 2016 dollars discounted to 2021. The table reflects the present value of non-monetized benefits from ozone, $PM_{2.5}$ and NO_2 reductions as a β, while b represents the equivalent annualized value of these non-monetized benefits. These values will differ across the discount rates and depend on the B's in Tables IX.4 and IX.5.

TABLE IX.6—ESTIMATED COMPLIANCE COSTS, CLIMATE BENFITS, AND NET BENEFITS OF THE PROPOSED RULE, 2021 THROUGH 2025

[Millions 2016$, discounted to 2021]

	3% Discount rate	7% Discount rate
Present Value:		
Benefits [c d]	101 + β	15 + β
Climate Benefits [c]	101	15
Compliance Costs [e]	87	83
Net Benefits	14 + β	−68 + β
Equivalent Annualized Value:		
Benefits	22 + b	4 + b
Climate Benefits	22	4

TABLE IX.6—ESTIMATED COMPLIANCE COSTS, CLIMATE BENFITS, AND NET BENEFITS OF THE PROPOSED RULE, 2021 THROUGH 2025—Continued

[Millions 2016$, discounted to 2021]

	3% Discount rate	7% Discount rate
Compliance Costs	19	20
Net Benefits	3 + b	−17+ b

[a] All estimates in this table are rounded to two significant figures, so numbers may not sum due to independent rounding.
[b] The annualized present value of costs and benefits are calculated over a 5 year period from 2021 to 2025.
[c] Benefits ranges represent discounting of climate benefits at a real discount rate of 3 percent and 7 percent. Climate benefits are based on changes (reductions) in CO_2 emissions.
[d] β and b is the sum of all unquantified ozone, $PM_{2.5}$, and NO_2 benefits. The annual values of β and b will differ across discount rates. While EPA did not estimate these benefits in the RIA, Appendix 5B in the RIA presents $PM_{2.5}$ and ozone estimates quantified using methods consistent with the previously published ISAs to provide information regarding the potential magnitude of the benefits of this proposed rule.
[e] The costs presented in this table reflect annualized present value compliance costs calculated over a 5 year period from 2021 to 2025.

As shown in Table IX–6, the PV of the climate benefits of this proposed rule, discounted at a 7-percent rate, is estimated to be about $15 million, with an EAV of about $4 million. At a 3-percent discount rate, the PV of the climate benefits is estimated to be about $101 million, with an EAV of $22 million. The PV of the compliance costs, discounted at a 7-percent rate, is estimated to be about $83 million, with an EAV of about $20 million. At a 3-percent discount rate, the PV of the estimated compliance costs is about $87 million, with an EAV of about $19 million. The PV of the net benefits of this proposed rule, discounted at a 7-percent rate, is estimated to be about −$68 million, with an EAV of about −$17 million. At a 3-percent discount rate, the PV of net benefits is about $14 million, with an EAV of about $3 million. See the RIA for additional discussion on costs, benefits, and impacts.

X. Summary of Proposed Changes to the Regulatory Text for the Federal Implementation Plans and Trading Programs

This section describes the proposed amendments to the regulatory text for the federal implementation plans and the trading program regulations related to the proposed findings and remedy discussed elsewhere in this document. The primary amendments to the CFR would be revisions to the CSAPR Update FIP provisions in 40 CFR part 52 and the creation of a new CSAPR NO_X Ozone Season Group 3 Trading Program in 40 CFR part 97, subpart GGGGG. In addition, amendments are proposed to the regulations for the existing CSAPR NO_X Ozone Season Group 2 Trading Program to address the transition of the sources in certain states from the existing Group 2 program to the new Group 3 program. The existing regulations for the administrative appeal procedures in 40 CFR part 78 would also be revised to reflect the applicability of those procedures to decisions of the EPA Administrator under the new Group 3 trading program.

In addition to these primary amendments, certain revisions are proposed to the regulations for the existing CSAPR trading programs and the Texas SO_2 Trading Program for conformity with the proposed provisions of the new Group 3 trading program, as discussed in section VIII.C.8. This section also describes a small number of minor additional proposed corrections and clarifications to the existing CFR text for the CSAPR trading programs, the Texas SO_2 Trading Program, and the appeal procedures. EPA has included documents in the docket for this proposed action showing all of the proposed revisions to part 52, part 78, and subparts AAAAA through FFFFF of part 97 in redline-strikeout format.

A. Amended CSAPR Update FIP Provisions

The CSAPR and the CSAPR Update FIP provisions related to ozone season NO_X emissions are set forth in § 52.38(b) as well as sections of part 52 specific to each covered state. Proposed amendments to § 52.38(b)(1) would expand the overall set of CSAPR trading programs addressing ozone season NO_X emissions to include the new Group 3 trading program in subpart GGGGG of part 97 in addition to the current Group 1 and Group 2 trading programs in subparts BBBBB and EEEEE of part 97, respectively while proposed amendments to § 52.38(b)(2) would identify the states whose sources would be required under the new or amended FIPs to participate in each of the respective trading programs with regard to their emissions occurring in particular years. More specifically, for sources in the states that EPA proposes to find have further good neighbor obligations with respect to the 2008 ozone NAAQS under this rule, new § 52.38(b)(2)(iv) would end the requirement to participate in the Group 2 trading program after the 2020 control period and new § 52.38(b)(2)(v) would establish the requirement to participate in the new Group 3 trading program starting with the 2021 control period.

The changes in FIP requirements set forth in § 52.38(b)(1) and (2) would be replicated in the state-specific CFR sections for each of the Group 3 states.[179] In each such CFR section, the current provision indicating that sources in the state are required to participate in the CSAPR NO_X Ozone Season Group 2 Trading Program would be revised to end that requirement with respect to emissions after 2020 and to restore previously removed language indicating that participation by those sources in the Group 2 trading program was only a partial remedy for the state's underlying good neighbor obligation.[180] A further provision would be added in each section indicating that sources in the state are required to participate in the CSAPR NO_X Ozone Season Group 3 Trading Program with respect to emissions starting in 2021. These added provisions would not contain the partial-remedy language, consistent with EPA's proposed determinations in this rule that participation in the Group 3 trading program by a state's EGUs would constitute a full remedy for each such state's underlying good neighbor obligation. No changes would be made to the CFR sections for the remaining states whose sources currently participate in the Group 2 trading

[179] *See* §§ 52.731(b) (Illinois), 52.789(b) (Indiana), 52.940(b) (Kentucky), 52.984(d) (Louisiana), 52.1084(b) (Maryland), 52.1186(e) (Michigan), 52.1584(e) (New Jersey), 52.1684(b) (New York), 52.1882(b) (Ohio), 52.2040(b) (Pennsylvania), 52.2440(b) (Virginia), and 52.2540(b) (West Virginia).

[180] As discussed elsewhere in this document, EPA is proposing to correct the approval of Kentucky's SIP revision that previously led to removal of the partial-remedy language for that state and instead issue a disapproval. For the remaining states, the partial-remedy language was removed in the CSAPR Close-Out, which has been vacated.

program. For these states, EPA's proposed findings in this action would be consistent with and would therefore affirm the previous removal of language indicating that participation by the states' sources in the Group 2 trading program was only a partial remedy for the states' underlying good neighbor obligations.[181]

As under the CSAPR and the CSAPR Update, states subject to the proposed FIPs under this rule would have several options to revise their SIPs to modify or replace those FIPs while continuing to use the Group 3 trading program as the mechanism for meeting the states' good neighbor obligations. New § 52.38(b)(11), (12), and (13) would establish options to replace allowance allocations for the 2022 control period, to adopt an abbreviated SIP revision for control periods in 2023 or later years, and to adopt a full SIP revision for control periods in later years, respectively. The first two options would modify certain provisions of the trading program as applied to a state's sources but leave the FIP in place, while the third option would replace the FIP with largely identical SIP requirements for sources to participate in a state Group 3 trading program integrated with the federal Group 3 trading program. These options closely replicate the analogous current options in § 52.38(b)(7), (8) and (9) with regard to the Group 2 trading program. To make use of the option to submit state-determined allocations for the 2022 control period, a state would need to notify EPA by 90 days after publication of the final rule of its intent to submit to EPA by 180 days after publication a state-approved spreadsheet setting forth the allocations. To modify or replace the FIP with an abbreviated or full SIP affecting 2023 or 2024 allocations, the state would need to submit a SIP revision by December 1, 2021.

Like the analogous options under the Group 2 trading program, the abbreviated and full SIP options under the Group 3 trading program in new § 52.38(b)(12)(i) and (ii) and (b)(13)(i) and (ii) would include options for a state to expand applicability to include certain non-EGU boilers and combustion turbines or smaller EGUs in the state that were previously subject to the NO_X Budget Trading Program. As discussed in section VIII.F.3 of this document, in conjunction with an expansion to include the non-EGUs, the state would be able to also issue an additional amount of allowances. Revised § 52.38(b)(14)(ii)[182] clarifies that a SIP revision requiring a state's sources—EGUs or non-EGUs—to participate in the Group 3 trading program would satisfy the state's obligations to adopt control measures for such sources under the NO_X SIP Call.

The proposed option discussed in section VIII.D.4 of this preamble for a state whose EGUs currently are required to participate the Group 1 or Group 2 trading program to submit a full SIP revision requiring its sources to instead participate in the Group 3 program is set forth in new § 52.38(b)(10). This option would be generally similar to the full SIP option under new § 52.38(b)(13) for states whose sources are already subject to the Group 3 program under a FIP. To the extent that EPA had already commenced allocations of Group 1 or Group 2 allowances to sources in the state for future control periods, the Group 1 or Group 2 allowances already allocated for those control periods would be converted into Group 3 allowances under revised § 97.526(c)(2) or new § 97.826(c)(2).

The principal consequences of EPA's approval of a full SIP revision under § 52.38(b) would be set forth in § 52.38(14) and (15). Revised § 52.38(b)(14)(i)[183] would provide that—with exceptions indicated in other provisions of § 52.38(b)—full and unconditional approval of a state's full SIP revision under new § 52.38(b)(10) or (13) as correcting the SIP's deficiency that was the basis for a given FIP would cause the automatic withdrawal of the corresponding FIP requirements with regard to the sources in the state (except sources in Indian country with the borders of the state). New § 52.38(b)(15)(i), which addresses the Group 1 and Group 2 trading programs rather than the Group 3 trading program, identifies specific amended provisions of the federal trading Group 1 and Group 2 trading programs that would continue to apply to sources in a state Group 1 or Group 2 trading program implemented under a SIP provision in order to provide programmatic consistency across sources participating in the federal trading program and sources participating in integrated state trading programs. Revised § 52.38(b)(15)(ii),[184] which addresses the Group 3 trading program as well as the Group 1 and Group 2 trading programs, would preserve EPA's ability to complete allowance allocations for any control period where such allocations were already underway when the SIP revision was approved, Provisions indicating these consequences of approval of a full SIP revision would also be added to the state-specific CFR sections.

The transition between the Group 2 trading program and the Group 3 trading program, as well as the transition between the Group 1 trading program and the Group 2 trading program or Group 3 trading program, is addressed in § 52.38(b)(15)(iii), which identifies several allowance-related provisions of the federal trading program regulations that would continue to apply when the sources in a state transition to a different federal trading program (and also would continue to apply under an integrated state trading program). Revised § 52.38(b)(15)(iii)(A)[185] would preserve EPA's authority under § 97.526(c) to carry out conversions of Group 1 allowances to Group 3 allowances in all compliance accounts (as well as all general accounts) following the transition of a state's sources from the Group 1 trading program to the Group 3 trading program or following any SIP revision, adding to the provision's existing coverage with respect to conversions of Group 1 allowances to Group 2 allowances. New § 52.38(b)(15)(iii)(B) would preserve EPA's analogous authority under new § 97.826(c) with respect to conversions of Group 2 allowances to Group 3 allowances in analogous circumstances. New § 52.38(b)(15)(iii)(C) would similarly preserve EPA's authority under new § 97.811(d), concerning the proposed recall of Group 2 allowances allocated to sources in Group 3 states for control periods after 2020, following any SIP revision. For clarity, revisions to the state-specific CFR sections would replicate the provisions of § 52.38(b)(15)(iii) indicating that the provisions of §§ 97.526(c), 97.826(c), and 97.811(d) would continue to apply following the transition of a state's sources from one trading program to another or following approval any SIP revision under § 52.38(b).

New § 52.38(b)(17)(ii) would provide that, after the control period in 2020, EPA would stop administering all Group 2 trading program provisions established under SIP revisions previously approved for Group 2 states whose sources would be required to

[181] *See* §§ 52.54(b) (Alabama), 52.184 (Arkansas), 52.840(b) (Iowa), 52.882(b) (Kansas), 52,1284 (Mississippi), 52.1326(b) (Missouri), 52.1930 (Oklahoma), 52.2283(d) (Texas), and 52.2587(e) (Wisconsin).

[182] Redesignated from § 52.38(b)(10)(ii).

[183] Redesignated from § 52.38(b)(10)(i).

[184] Redesignated from § 52.38(b)(11)(i).

[185] Redesignated from § 52.38(b)(11)(ii).

participate in the Group 3 program starting with the 2021 control period.[186]

Finally, new § 52.38(b)(18) would contain updatable lists of states with approved SIP revisions to modify or replace the FIP requirements for the Group 3 trading program, supplementing the analogous lists at § 52.38(b)(16) and (b)(17)(i)[187] for the Group 1 and Group 2 trading programs.

B. New CSAPR NO_X Ozone Season Group 3 Trading Program Provisions

The proposed Group 3 trading program regulations would be promulgated in a new subpart GGGGG of part 97 (40 CFR 97.1001 through 97.1035). Definitions, applicability, standard requirements, and other general provisions would be set forth in §§ 97.1001 through 97.1008. State budgets and allocations of allowances to individual units would be addressed in §§ 97.1010 through 97.1012, and provisions concerning designated representatives would be covered in §§ 97.1013 through 97.1018. Management and use of allowances, including accounts, recordation, transfers, compliance, and banking, would be addressed in §§ 97.1020 through 97.1028. Provisions for monitoring, recordkeeping, and reporting would be set forth in §§ 97.1030 through 97.1035.

In general, the Group 3 trading program provisions would parallel the existing Group 2 trading program regulations in subpart EEEEE of part 97 but would reflect the amounts of the budgets, new unit set-asides, Indian country new unit set-asides, and variability limits established in this proposed rulemaking, all of which would be set forth in new § 97.1010. That same section would also set forth the amounts of the Group 3 budgets, new unit set-asides, and variability limits that Group 1 or Group 2 states could adopt in SIP revisions that would be approvable under new § 52.38(b)(10).

Under § 97.1006(c)(3)(i) and (ii), the obligations to hold one Group 3 allowance for each ton of emissions during the control period and to comply with the Group 3 trading program's assurance provisions would begin with the 2021 control period, four years later than the analogous start dates for the Group 2 trading program. The deadlines for certifying monitoring systems under § 97.1030(b) and for beginning quarterly reporting under § 97.1034(d)(1) similarly would be four years later than the analogous Group 2 trading program deadlines. The allowance recordation deadlines under § 97.1021 would begin generally four years later than the comparable recordation deadlines under the Group 2 trading program but would reach the same schedule by July 1, 2023, which would be the deadline for recordation of allowances for the control period in 2026 under both trading programs. However, under new § 97.1021(m), EPA would not record any allocations of Group 3 allowances to any unit at a source until all deductions of Group 2 allowances previously allocated to the units at the source for control periods after 2020 had been completed in accordance with new § 97.811(d).

Like the analogous Group 2 regulations, the Group 3 regulations would allow a Group 3 allowance that was allocated to any account as a replacement for removed Group 1 or Group 2 allowances to be used for all of the purposes for which any other Group 3 allowance may be used. This would be accomplished by adding references to §§ 97.526(c) and 97.826(c)—the sections under which the conversions would be carried out—to the definitions of ''allocate'' and ''CSAPR NO_X Ozone Season Group 3 allowance'' in § 97.1002 as well as the default order for deducting allowances for compliance purposes under § 97.1024(c)(2).

Any Group 3 allowances allocated based on conversion of Group 1 or Group 2 allowances allocated for future years—specifically, the Group 3 allowances that could be allocated under § 97.526(c)(2) or § 97.826(c)(2) if EPA approved a SIP revision from a Group 1 or Group 2 state requiring sources in the state to participate in the Group 3 trading program—would also be treated like any other Group 3 allowance for purposes of determining shares of responsibility for exceedances under the assurance provisions. New paragraphs (2)(iii) and (iv) of the definition of ''common designated representative's assurance level'' in § 97.1002 would establish this equivalence. However, allocations of Group 3 allowances converted from banked Group 1 or Group 2 allowances would be excluded for purposes of determining such shares of responsibility because such converted allowances would not represent allowances allocated from the current control period's emissions budgets. This exclusion would be addressed in new paragraph (2)(ii) of the definition of ''common designated representative's assurance level'' in § 97.1002.

As is currently allowed under the Group 2 trading program, EPA has proposed that, in order to facilitate NO_X SIP Call compliance, a state would be allowed to expand applicability of the Group 3 trading program to include any sources that previously participated in the NO_X Budget Trading Program, and that the state would be able to issue an amount of allowances beyond the state's Group 3 trading program budget if applicability is expanded to include large non-EGU boilers and turbines. Again, like the Group 2 trading program, EPA has also proposed that the assurance provisions would apply only to emissions from the sources subject to the Group 3 trading program before any such expansion. Accordingly, the assurance provisions in the proposed Group 3 trading program regulations would exclude any additional units and allowances brought into the program through such a SIP revision. Specifically, the definitions of ''base CSAPR NO_X Ozone Season Group 3 unit'' and ''base CSAPR NO_X Ozone Season Group 3 source'' in § 97.1002 would exclude units and sources that would not have been included in the program under § 97.1004, and all provisions related to the Group 3 assurance provisions would reference only such ''base'' units and sources.

Proposed §§ 97.1016, 97.1018, and 97.1020(c)(1) and (5) would reduce the administrative compliance burden for sources in the transition from the Group 2 trading program to the Group 3 trading program by providing that certain one-time or periodic submissions made for purposes of compliance with the Group 1 or Group 2 trading program will be considered valid for purposes of the Group 3 trading program as well. The submissions treated in this manner are a certificate of representation or notice of delegation submitted by a designated representative and an application for a general account or notice of delegation submitted by an authorized account representative.

Finally, in conjunction with promulgation of the new Group 3 trading program, EPA has proposed to amend the administrative appeal provisions in part 78 to make the procedures of that part applicable to determinations of the EPA Administrator under the new Group 3 trading program in the same manner as the procedures are applicable to similar determinations under the other CSAPR trading programs and previous EPA trading programs. These amendments would add provisions for the Group 3 trading program to: The list in § 78.1(a)(1) of CFR sections (and analogous SIP revisions) generally giving rise to determinations subject to the part 78 procedures; the list in

[186] The states with approved SIP revisions that would be affected under this provision are Indiana and New York.

[187] Redesignated from § 52.38(b)(12) and (13).

§ 78.1(b) of certain determinations that are expressly subject to those procedures; the list in § 78.3(a) of the types of persons who may seek review under the procedures; the list in § 78.3(b) of persons who must be served regarding an appeal; the list in § 78.3(c) of the required contents of petitions for review; the list in § 78.3(d) of matters for which a right of review under part 78 is not provided; and the requirements in § 78.4(a)(1) as to who must sign a filing.

C. Transitional Provisions

As discussed in section VIII.C.4., EPA has proposed to establish three sets of transitional provisions to address the transition of sources that currently participate in the CSAPR NO_X Ozone Season Group 2 Trading Program but that, starting with the 2021 control period, would instead participate in the CSAPR NO_X Ozone Season Group 3 Trading Program.

The first set of transitional provisions, which would be implemented at new § 97.811(d), would address the recall of Group 2 allowances previously allocated for control periods after 2020 to Group 3 sources (and other entities in Group 3 states).

The second set of transitional provisions would address the possibility that the effective date for the final action in this rulemaking would fall after May 1, 2021. In order to avoid application of the more stringent emission reduction requirements proposed in this action retroactively before the final rule's effective date, this set of provisions would make supplemental allocations of Group 3 allowances to Group 3 sources in amounts collectively equal to the differences in the respective states' budgets under the Group 2 and Group 3 trading programs for the portion of the 2021 ozone season occurring before that date. The total amounts of supplemental allowances for each state would be determined under new § 97.1010(d). The amount of the allocation to each Group 3 unit would be the incremental amount that each unit would have received if the supplemental allowances had been allocated as part of the respective state's emissions budget for 2021, using the same allocation methodology EPA proposes to apply to compute the allocations to existing units from the emissions budget, as set forth in new § 97.1011(a)(3). In addition, to avoid retroactive application of the more stringent Group 3 assurance levels associated with the more stringent Group 3 budgets before the final rule's effective date, the assurance levels for each Group 3 state for the 2021 control period would be increased by the product of 1.21 times the total amount of the supplemental allocations to the units in that state. The language implementing this provision is included in new § 97.1006(c)(2)(iii). New paragraph (2)(v) of the definition of ''common designated representative's assurance level'' in § 97.1002 includes language that accounts for the allocations of supplemental allowances and the increment to the variability limit when apportioning responsibility for any exceedance of a state's assurance level among the owners and operators of the state's sources.

The third set of transitional provisions would address conversions of Group 2 allowances (and in some instances Group 1 allowances) to Group 3 allowances for use in the new Group 3 program. These provisions would be implemented largely through the addition of new § 97.826(c) to the Group 2 trading program regulations and revisions to the analogous provisions in the Group 1 trading program regulations in 97.526(c). Most notably, the proposed one-time conversion of banked 2017–2020 Group 2 allowances to Group 3 allowances would be implemented through the provisions in new § 97.826(c)(1). These provisions set forth the schedule and mechanics for a default one-time conversion of Group 2 allowances that were allocated for the control periods in 2017 through 2020 and that that remain banked following the completion of deductions for compliance for the 2020 control period. The conversion would be applied to all banked Group 2 allowances that as of the scheduled conversion date are held in any general account and in any compliance account for a source located in a Group 3 state but would not be applied to allowances held in a compliance account for a source located in a Group 2 state. The owner or operator of a source located in a Group 2 state could retain banked Group 2 allowances for future use in the Group 2 trading program simply by keeping the allowances in the source's compliance account as of the conversion date or, alternatively, could elect to have banked Group 2 allowances converted to Group 3 allowances simply by transferring the allowances from the source's compliance account to a general account prior to the conversion date. The conversion factor would be the greater of 1.0000 or the ratio of the total number of banked Group 2 allowances being converted to the sum of the variability limits (adjusted to exclude any portion of the first ozone season before the final rule's effective date) for all states covered by the Group 3 trading program.

The proposed option under which the authorized account representative for a general account could elect to prevent certain Group 2 allowances from being included in the default conversion process would be implemented through the provisions in new § 97.826(c)(1)(iv). Under these provisions, before the scheduled date for converting Group 2 allowances to Group 3 allowances, EPA would establish a temporary holding account that would accept transfers of Group 2 allowances from general accounts. Any Group 2 allowances transferred to the temporary holding account in advance of the scheduled conversion date would not be converted to Group 3 allowances, and after completing the conversion procedures for other Group 2 allowances, EPA would transfer the unconverted Group 2 allowances back to the general accounts from which the transfers into the temporary holding account were made.

The additional conversion provisions in § 97.826(c)(2) and (3) would apply only in instances where a Group 2 state submits and EPA approves a SIP revision requiring sources in the state to participate in the Group 3 trading program. In that case, under § 97.826(c)(2), EPA would replace the allocations of Group 2 allowances to the state's sources already recorded for future control periods with allocations of Group 3 allowances, using a conversion factor determined based on the ratio of the state's emissions budget under the Group 2 trading program to the state's optional emissions budget under the Group 3 trading program. If all Group 2 states were to elect this option, following approval of the SIP submission for the last such state, under § 97.826(c)(3), EPA would convert any remaining banked Group 2 allowances from prior control periods using a conversion factor based on the ratio of the total number of Group 2 allowances being converted to that state's variability limit under the Group 3 program. Allowances would be converted under these provisions regardless of the accounts in which they were held.

Additional provisions of § 97.826(c) would address special circumstances. Under § 97.826(c)(4), if any Group 2 allowances are removed for conversion from the compliance account for a source in a state not covered by the Group 3 program, the owner or operator could identify to EPA a general account to receive the Group 3 allowances. This provision would be necessary in such circumstances because Group 3 allowances could not be recorded in any compliance account other than a compliance account for a source with a unit affected under the Group 3 trading program. If the owner or operator did not identify a general account to receive

the Group 3 allowances within 180 days after the conversion, EPA would be authorized to retire the allowances. (The provisions in new § 97.826(c)(4) would not be used in the transition from the Group 2 trading program to the Group 3 trading program if, as proposed, sources in all existing Group 2 states are either transitioned to the Group 3 trading program or continue to be covered by the Group 2 trading program.)

Under § 97.826(c)(5), EPA would be able to group multiple general accounts under common ownership for purposes of performing conversion computations. Because allowances are only recorded as whole allowances, allowance conversion computations will necessarily be rounded to whole allowances. The purpose of the grouping provision would be to ensure that, given rounding, the total quantities of Group 3 allowances issued would not be unduly affected by how the Group 2 allowances are distributed across multiple general accounts under common ownership, with potentially adverse consequences to achievement of the emission reductions required under the rule.

There is a possibility under the Group 2 trading program that some new Group 2 allowances could be issued after the conversions to Group 3 allowances have already taken place. Under § 97.826(c)(6), EPA may convert these allowances to Group 3 allowances as if they had been issued and recorded before the general conversions.

Owners and operators of Group 3 sources generally would not be able to retain banked Group 2 allowances in the compliance accounts for those sources. However, new § 97.826(c)(7) would authorize the use of Group 3 allowances to satisfy obligations to hold Group 2 allowances that might arise after the conversion date, such as an obligation to hold additional allowances because of excess emissions or for compliance with the assurance provisions. When held for this purpose, a single Group 3 allowance could satisfy the obligation to hold more than one Group 2 allowance, as though the conversion were reversed. (As an alternative to using these provisions, the owners and operators of a Group 3 source could use Group 2 allowances held in a general account.)

Amendments addressing conversions of Group 1 allowances to Group 3 allowances in the event Georgia were to elect to join the Group 3 trading program would be reflected in proposed revisions to § 97.526(c)(2) through (7). The revisions would parallel the new provisions discussed above in § 97.826(c)(2) through (7), and in the case of 97.526(c)(4) would include changes making that provision more similar to new § 97.826(c)(4) in two ways. First, the provision would be simplified by requiring that the account identified to receive any otherwise unclaimed allowances must be a general account. Identification of another compliance account would no longer be allowed, making it possible to eliminate rule provisions distinguishing eligible compliance accounts from ineligible compliance accounts. (Any general account would be eligible.) Second, the provision would be modified to authorize the Administrator to retire any allowances that remain unclaimed 180 days after the conversion in question, or, if later, 90 days after the date of publication of a final rule in this action.

Finally, in § 78.1(b)(14) and (17), determinations of the EPA Administrator under §§ 97.526(c) and 97.826(c) regarding conversions of Group 1 and Group 2 allowances to Group 3 allowances and determinations of the EPA Administrator under § 97.811(d) regarding the recall of Group 2 allowances previously allocated to Group 3 units for control periods after 2020 would be added to the list of determinations expressly subject to the part 78 procedures.

D. Conforming Revisions, Corrections, and Clarifications To Existing Regulations

As discussed in section VIII.C.8, EPA has proposed several amendments to the existing CSAPR trading programs and the Texas SO_2 Trading Program for conformity with the analogous provisions of the new Group 3 trading program.

The proposal to record allocations to existing units three instead of four years in advance of the control period at issue, starting with allocations for the 2025 control periods, would be implemented in the existing CSAPR trading programs through revisions to §§ 97.421(f), 97.521(f), 97.621(f), 97.721(f), and 97.821(f).

The proposal to switch from a two-round process to a one-round process for allocating allowances from new unit set-asides and Indian country new unit set-asides starting with the 2023 control periods would be implemented in the existing CSAPR trading programs through revisions to §§ 97.411(b), 97.511(b), 97.611(b), 97.711(b), and 97.811(b) and 97.412, 97.512, 97.612, 97.712, and 97.812. The changes to the deadlines for EPA to record the allocations determined through the proposed one-round process would be implemented through revisions to §§ 97.421(g) through (j), 97.521(g) through (j), 97.621(g) through (j), 97.721(g) through (j), and 97.821(g) through (j). The necessary coordinating revisions to dates included in the definitions of ''allowance transfer deadline'' and ''common designated representative'' would be made in §§ 97.402, 97.502, 97.602, 97.702, and 97.802. The proposed simplifications of the assurance provisions made possible by the changes in the new unit set-aside provisions would be implemented through revisions to §§ 97.425(b), 97.525(b), 97.625(b), 97.725(b), and 97.825(b). The related extensions to the deadlines for states with approved SIP revisions to submit to EPA any state-determined allowance allocations would be implemented through revisions to § 52.38(a)(4) and (5) and (b)(4), (5), (8) and (9) and § 52.39(e), (f), (h), and (i).

As discussed in section VIII.C.8., EPA has proposed to replicate several of the deadline revisions proposed for the existing CSAPR trading programs in the similarly structured Texas SO_2 Trading Program in order to minimize unnecessary differences between the programs. These revisions to the Texas SO_2 Trading Program regulations would be implemented at § 97.902 (definitions of ''allowance transfer deadline'' and ''common designated representative''), 97.921(b) and (c), and 97.925(b).

The proposed amendments that would authorize EPA to reallocate any incorrectly allocated allowances through the new unit set-aside procedures for a control period after the correction is identified, instead of the new unit set-aside procedures for the control period for which the incorrect allocations were originally made, would be implemented in §§ 97.411(c)(5), 97.511(c)(5), 97.611(c)(5), 97.711(c)(5), and 97.811(c)(5).

The proposed amendments to correct the amounts of allowances in the new unit set-asides to address rounding differences from earlier amendments would be implemented in §§ 97.410, 97.510, 97.610, and 97.710.

New § 52.38(a)(7)(i) and (b)(15)(i) and § 52.39(k)(1) would identify the amended provisions that EPA proposes to implement in the existing state CSAPR trading programs to ensure consistent program implementation across all sources, whether the sources participate in the integrated trading programs under FIPs or approved SIP revisions.

EPA proposes to make additional, non-substantive corrections and clarifications in various provisions of the existing CSAPR trading programs in subparts AAAAA through EEEEE of part 97, the Texas SO_2 Trading Program in

subpart FFFFF of part 97, and the appeal procedures in part 78. The corrections and clarifications address minor typographical, wording, and formatting errors or update existing cross-references to reflect the new and redesignated provisions in §§ 52.38 and 52.39. In addition, the proposed corrections and clarifications include the following items:

• *Reorganization of the definitions of* ''*common designated representative's assurance level*'' *and* ''*common designated representative's share*'' *in §§ 97.402, 97.502, 97.602, 97.702, and 97.802.* The revisions would clarify the definitions by relocating certain language between them, identifying provisions that would no longer apply after the control periods in 2023 because of the proposed revisions to the new unit set-aside allocation procedures, and correcting the omission of certain words in the terms ''simple cycle combustion turbine'' and ''combined cycle combustion turbine''.

• *Addition of a definition of* ''*CSAPR NO_X Ozone Season Group 3 allowance*'' *in §§ 97.502 and 97.802 and addition of definitions of* ''*CSAPR NO_X Ozone Season Group 3 Trading Program*'' *and* ''*nitrogen oxides*'' *in §§ 97.402, 97.502, 97.602, 97.702, 97.802, and 97.902.* The new definitions of terms for the Group 3 allowances and trading program are needed for other provisions that reference the Group 3 allowances or trading program, while the definition of nitrogen oxides corrects a current omission. Nitrogen oxides would be defined as ''all oxides of nitrogen except nitrous oxide (N_2O), expressed on an equivalent molecular weight basis as nitrogen dioxide (NO_2)'', which is consistent both with the definitions used in other EPA programs (*see, e.g.,* 40 CFR 51.50, 51.121(a), and 51.122(a)) and with historical practice in the existing CSAPR programs.

• *Revisions to the descriptions of units and control periods eligible for allocations of allowances from the new unit set-asides and Indian country new unit set-asides in §§ 97.412, 97.512, 97.612, 97.712, and 97.812.* The revisions would not substantively alter which units would receive allocations or the amounts of those allocations. Rather, the revisions would more clearly express the existing requirements of the allocation procedures, under which EPA calculates a given unit's allocations considering only the unit's emissions that occur after its deadline for monitor certification (because any earlier emissions would not have occurred in a ''control period'' for that unit).

• *Revisions to the provisions for identification of specific allowances to be deducted for compliance in §§ 97.424(c), 97.524(c), 97.624(c), 97.724(c), 97.824(c), and 97.924(c).* The revisions would clarify by referencing designated representatives instead of authorized account representatives, consistent with the existing requirement that the authorized account representative for a source's compliance account must be the designated representative for the source.

• *Addition of references in part 78 to the Texas SO_2 Trading Program.* The added references would be analogous to the references that would be added to part 78 for the proposed new Group 3 trading program. The applicability of the appeal procedures in part 78 to decisions of the EPA Administrator under the Texas SO_2 Trading Program has already been established in the provisions for that trading program at § 97.908, but the addition of references in part 78 would clarify the regulations.

XI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders (''E.O.'') can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed action would be an economically significant regulatory action and was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. EPA prepared an analysis of the potential costs and benefits associated with this proposed action. This analysis, which is contained in the ''Regulatory Impact Analysis for the Proposed Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS'' [EPA–452/R–15–009], is available in the docket and is briefly summarized in Section IX of this preamble.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This proposed action is expected to be an E.O. 13771 regulatory action. Details on the estimated costs of this proposed rule can be found in EPA's analysis of the potential costs and benefits associated with this action.

C. Paperwork Reduction Act (PRA)

This proposed action will not impose any new information collection burden under the PRA. This proposed action would relocate certain existing information collection requirements for certain sources from subpart EEEEE of 40 CFR part 97 to a new subpart GGGGG of 40 CFR part 97, but would neither change the inventory of sources subject to information collection requirements nor change any existing information collection requirements for any source. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0667.

D. Regulatory Flexibility Act (RFA)

I certify that this proposed action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this proposed action are small businesses, small organizations, and small governmental jurisdictions.

EPA has lessened the impacts for small entities by excluding all units serving generators with capacities equal to or smaller than 25 MWe. This exclusion, in addition to the exemptions for cogeneration units and solid waste incineration units, eliminates the burden of higher costs for a substantial number of small entities located in the 12 states for which EPA is proposing FIPs. Within these states, EPA identified seven potentially affected EGUs that are owned by two entities that met the Small Business Administration's criteria for identifying small entities. Neither of these entities is projected to experience compliance costs that exceed 1 percent of generation revenues in 2021. EPA estimated the total net compliance cost to these two small entities to be approximately $0.04 million (in $2016).

EPA has concluded that there will be no significant economic impact on a substantial number of small entities (No SISNOSE) for this proposed rule. Details of this analysis are presented in the RIA, which is in the public docket.

E. Unfunded Mandates Reform Act (UMRA)

This proposed action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and will not significantly or uniquely affect small governments. Note that we expect the proposal to potentially have an impact on only one category of government-owned entities (municipality-owned entities). This analysis does not examine potential indirect economic impacts associated with the proposal, such as employment effects in industries providing fuel and pollution control equipment, or the potential effects of electricity price

increases on government entities. For more information on the estimated impact on government entities, refer to the RIA, which is in the public docket.

F. Executive Order 13132: Federalism

This proposed action does not have federalism implications. If finalized, this proposed action 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.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed action has tribal implications. However, it would neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law.

This action proposes to implement EGU NO_X ozone season emissions reductions in 12 eastern states (Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia.). However, at this time, none of the existing or planned EGUs affected by this rule are owned by tribes or located in Indian country. This proposed action may have tribal implications if a new affected EGU is built in Indian country. Additionally, tribes have a vested interest in how this proposed rule would affect air quality.

In developing the CSAPR, which was promulgated on July 6, 2011, to address interstate transport of ozone pollution under the 1997 ozone NAAQS, EPA consulted with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing that regulation to allow for meaningful and timely tribal input into its development. A summary of that consultation is provided at 76 FR 48346.

EPA received comments from several tribal commenters regarding the availability of the CSAPR allowance allocations to new units in Indian country. EPA responded to these comments by instituting Indian country new unit set-asides in the final CSAPR. In order to protect tribal sovereignty, these set-asides are managed and distributed by the federal government regardless of whether the CSAPR in the adjoining or surrounding state is implemented through a FIP or SIP. While there are no existing affected EGUs in Indian country covered by this proposal, the Indian country set-asides will ensure that any future new units built in Indian country will be able to obtain the necessary allowances. This proposal maintains the Indian country new unit set-aside and adjusts the amounts of allowances in each set-aside according to the same methodology of the CSAPR rule.

EPA informed tribes of our development of this proposal through a National Tribal Air Association—EPA air policy conference call on June 25, 2020. EPA plans to further consult with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing this proposed regulation to solicit meaningful and timely input into its development. EPA will facilitate this consultation before finalizing this proposed rule.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This proposed action is not subject to E.O. 13045 because EPA does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in Chapter 5 of the accompanying RIA.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This proposal, which is a significant regulatory action under E.O. 12866, is likely to have a significant effect on the supply, distribution, or use of energy. EPA has prepared a Statement of Energy Effects for the proposed regulatory control alternative as follows. The Agency estimates a much less than 1 percent change in retail electricity prices on average across the contiguous U.S. in 2021, and a much less than 1 percent reduction in coal-fired electricity generation in 2021 as a result of this rule. EPA projects that utility power sector delivered natural gas prices will change by less than 1 percent in 2021. For more information on the estimated energy effects, refer to the RIA, which is in the public docket.

J. National Technology Transfer and Advancement Act (NTTAA)

This proposed rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

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.

EPA notes that this action proposes to revise the CSAPR Update to reduce interstate ozone transport with respect to the 2008 ozone NAAQS. This rule uses EPA's authority in CAA section 110(a)(2)(d) (42 U.S.C. 7410(a)(2)(d)) to reduce NO_X pollution that significantly contributes to downwind ozone nonattainment or maintenance areas. As a result, the rule will reduce exposures to ozone in the most-contaminated areas (*i.e.,* areas that are not meeting the 2008 ozone NAAQS). In addition, the proposed rule separately identifies both nonattainment areas and maintenance areas. This requirement reduces the likelihood that areas close to the level of the standard will exceed the current health-based standards in the future. EPA proposes to implement these emission reductions using the CSAPR NO_X Ozone Season Group 3 program with assurance provisions.

EPA recognizes that many environmental justice communities have voiced concerns in the past about emission trading and the potential for any emission increases in any location. The CSAPR NO_X Ozone Season Group 3 Trading Program in the proposed action is the result of EPA's application of the 4-step framework to reduce interstate ozone pollution and implement those reductions, similar to the trading programs developed in the CSAPR (CSAPR NO_X Ozone Season Group 1 Trading Program) and modified in the CSAPR Update (CSAPR NO_X Ozone Season Group 2 Trading Program), both of which also resulted from the application of the 4-step framework. EPA believes that this approach used in the CSAPR and in the CSAPR Update mitigated community concerns about emissions trading, and that this proposal, which applies the same 4-step framework and proposes a trading program similar to those used in the CSAPR and the CSAPR Update, will also minimize community concerns. EPA seeks comment from communities on this proposal (Comment C–41).

Ozone pollution from power plants has both local and regional components: Part of the pollution in a given location—even in locations near emission sources—is due to emissions from nearby sources and part is due to emissions that travel hundreds of miles and mix with emissions from other sources.

It is important to note that the section of the Clean Air Act providing authority for this proposed rule, section 110(a)(2)(D) (42 U.S.C. 7410(a)(2)(D)), unlike some other provisions, does not

dictate levels of control for particular facilities. In this proposed action, as in the CSAPR and the CSAPR Update, sources in the trading program may trade allowances with other sources in the same or different states, but any emissions shifting that may occur is constrained by an effective ceiling on emissions in each state (the assurance level). As in the CSAPR and the CSAPR Update, assurance provisions in the proposed rule outline the allowance surrender penalties for failing to meet the assurance level (see section VIII.C.2.); there are additional allowance for failing to hold an adequate number of allowances to cover emissions.

This approach will reduce EGU emissions in each state that significantly contributes to downwind nonattainment or maintenance areas with respect to the 2008 ozone NAAQS, while allowing power companies to adjust generation as needed and ensure that the country's electricity needs will continue to be met. As in the CSAPR and the CSAPR Update, EPA believes that the existence of these assurance provisions in the trading program, including the penalties imposed when triggered, will ensure that emissions from states covered by this proposal will stay below the level of the budget plus variability limit.

In addition, under this proposed rule all sources participating in the CSAPR NO_X Ozone Season Group 3 Trading Program must hold enough allowances to cover their emissions. Therefore, if a source emits more than its allocation in a given year, either another source must have used less than its allocation and be willing to sell some of its excess allowances, or the source itself had emitted less than its allocation in one or more previous years (*i.e.,* banked allowances for future use).

In summary, like the CSAPR and the CSAPR Update, this proposed rule minimizes community concerns about localized hot spots and reduces ambient concentrations of pollution where they are most needed by sensitive and vulnerable populations by: Considering the science of ozone transport to set strict state emissions budgets to reduce significant contributions to ozone nonattainment and maintenance (*i.e.,* the most polluted) areas; implementing air quality-assured trading; requiring any emissions above the level of the allocations to be offset by emission decreases; and imposing strict penalties for sources that contribute to a state's exceedance of its budget plus variability limit. In addition, it is important to note that nothing in this proposed rule allows sources to violate their title V permit or any other federal, state, or local emissions or air quality requirements.

In addition, it is important to note that CAA section 110(a)(2)(D), which addresses transport of criteria pollutants between states, is only one of many provisions of the CAA that provide EPA, states, and local governments with authorities to reduce exposure to ozone in communities. These legal authorities work together to reduce exposure to these pollutants in communities, including for minority, low-income, and tribal populations, and provide substantial health benefits to both the general public and sensitive sub-populations.

EPA has already taken steps to begin informing communities of our development of this proposal through a National Tribal Air Association—EPA air policy conference call on June 25, 2020. EPA plans to further consult with communities early in the process of developing this regulation to permit them to have meaningful and timely input into its development. EPA will facilitate this engagement before finalizing this proposed rule.

L. Determinations Under CAA Section 307(b)(1) and (d)

Section 307(b)(1) of the CAA indicates which federal courts of appeals have venue for petitions of review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the D.C. Circuit if (i) the Agency action consists of ''nationally applicable regulations promulgated, or final action taken, by the Administrator,'' or (ii) 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.'' EPA anticipates that final action related to this proposed rulemaking will be ''nationally applicable'' and of ''nationwide scope and effect'' within the meaning of CAA section 307(b)(1). Through this rulemaking action, EPA interprets section 110 of the CAA, a provision which has nationwide applicability, and thus it appears that the final action would be based on a determination of nationwide scope and effect. In addition, the rule would apply to 21 States. Also, the rule would be based on a common core of factual findings and analyses concerning the transport of pollutants from the different states subject to it, as well as the impacts of those pollutants and the impacts of options to address those pollutants, in yet other states. For these reasons, the Administrator proposes to determine that this proposed action is of nationwide scope and effect for purposes of CAA section 307(b)(1). If the Administrator makes this proposed determination final, then pursuant to CAA section 307(b) any petitions for review of any final actions regarding the rulemaking would be filed in the D.C. Circuit within 60 days from the date any final action is published in the **Federal Register**.

In addition, pursuant to sections 307(d)(1)(B) and 307(d)(1)(V) of the CAA, the Administrator determines that all aspects of this proposed action are subject to the provisions of section 307(d). CAA section 307(d)(1)(B) provides that section 307(d) applies to, among other things, ''the promulgation or revision of an implementation plan by the Administrator under CAA section 110(c).'' 42 U.S.C. 7407(d)(1)(B). Under CAA section 307(d)(1)(V), the provisions of section 307(d) also apply to ''such other actions as the Administrator may determine.'' 42 U.S.C. 7407(d)(1)(V). The Agency will comply with the procedural requirements of CAA section 307(d) in this rulemaking.

Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS

List of Subjects

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Sulfur dioxide.

40 CFR Part 78

Environmental protection, Administrative practice and procedure, Air pollution control, Electric power plants, Nitrogen oxides, Ozone, Particulate matter, Sulfur dioxide.

40 CFR Part 97

Environmental protection, Administrative practice and procedure, Air pollution control, Electric power plants, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: October 15, 2020.

Andrew Wheeler,

Administrator.

For the reasons stated in the preamble, EPA proposes to amend parts 52, 78, and 97 of title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart A—General Provisions

■ 2. Amend § 52.38 by:
■ a. Revising the paragraph (a) subject heading;
■ b. In paragraph (a)(1), adding a subject heading and removing ''(NO_X).'' and adding in its place ''(NO_X), except as otherwise provided in this section.'';
■ c. Adding a subject heading to paragraph (a)(2);
■ d. Adding a subject heading to paragraph (a)(3) introductory text and removing ''Notwithstanding the provisions of paragraph (a)(1) of this section, a State'' and adding in its place ''A State'';
■ e. Revising paragraph (a)(4) introductory text;
■ f. In paragraph (a)(4)(i)(A), removing the period at the end of the paragraph and adding in its place a semicolon;
■ g. In paragraph (a)(4)(i)(B), removing ''the following dates:'' and adding in its place ''the dates in Table 1 to this paragraph (a)(4)(i)(B);'', adding a heading to the table, removing the table entry for ''2023 and any year thereafter'', and adding table entries for ''2023 and 2024'' and ''2025 and any year thereafter'';
■ h. In paragraph (a)(4)(i)(C), removing ''year of such control period.'' and adding in its place ''year of such control period, for a control period before 2023, or by April 1 of the year following the control period, for a control period in 2023 or thereafter; and'';
■ i. Adding a subject heading to paragraph (a)(5) introductory text and removing ''Notwithstanding the provisions of paragraph (a)(1) of this section, a State'' and adding in its place ''A State'';
■ j. In paragraph (a)(5)(i)(A), removing the period at the end of the paragraph and adding in its place a semicolon;
■ k. In paragraph (a)(5)(i)(B), removing ''the following dates:'' and adding in its place ''the dates in Table 2 to this paragraph (a)(5)(i)(B);'', adding a heading to the table, removing the table entry for ''2023 and any year thereafter'', and adding table entries for ''2023 and 2024'' and ''2025 and any year thereafter'';
■ l. In paragraph (a)(5)(i)(C), removing ''year of such control period.'' and adding in its place ''year of such control period, for a control period before 2023, or by April 1 of the year following the control period, for a control period in 2023 or thereafter; and'';
■ m. In paragraph (a)(5)(v), adding ''and'' after the semicolon at the end of the paragraph;
■ n. Adding a subject heading to paragraph (a)(6) and removing ''Following promulgation'' and adding in its place ''Except as provided in paragraph (a)(7) of this section, following promulgation'';
■ o. Revising paragraph (a)(7);
■ p. Adding a subject heading to paragraph (a)(8) introductory text;
■ q. Revising the paragraph (b) subject heading;
■ r. Revising paragraph (b)(1);
■ s. Adding a subject heading to paragraph (b)(2);
■ t. In paragraph (b)(2)(ii), removing ''2016 only:'' and adding in its place ''2016 only, except as provided in paragraph (b)(15)(iii) of this section:'';
■ u. Revising paragraph (b)(2)(iii);
■ v. Adding paragraphs (b)(2)(iv) and (v);
■ w. Adding a subject heading to paragraph (b)(3) introductory text and removing ''Notwithstanding the provisions of paragraph (b)(1) of this section, a State'' and adding in its place ''A State'';
■ x. Revising paragraph (b)(4) introductory text;
■ y. In paragraph (b)(4)(ii)(A), removing the period at the end of the paragraph and adding in its place a semicolon;
■ z. In paragraph (b)(4)(ii)(B), removing ''the following dates:'' and adding in its place ''the dates in Table 3 to this paragraph (b)(4)(ii)(B);'', adding a heading to the table, removing the table entry for ''2023 and any year thereafter'', and adding table entries for ''2023 and 2024'' and ''2025 and any year thereafter'';
■ aa. In paragraph (b)(4)(ii)(C), removing ''year of such control period.'' and adding in its place ''year of such control period, for a control period before 2023, or by April 1 of the year following the control period, for a control period in 2023 or thereafter; and'';
■ bb. Adding a subject heading to paragraph (b)(5) introductory text and removing ''Notwithstanding the provisions of paragraph (b)(1) of this section, a State'' and adding in its place ''A State'';
■ cc. In paragraph (b)(5)(ii)(A), removing the period at the end of the paragraph and adding in its place a semicolon;
■ dd. In paragraph (b)(5)(ii)(B), removing ''the following dates:'' and adding in its place ''the dates in Table 4 to this paragraph (b)(5)(ii)(B);'', adding a heading to the table, removing the table entry for ''2023 and any year thereafter'', and adding table entries for ''2023 and 2024'' and ''2025 and any year thereafter'';
■ ee. In paragraph (b)(5)(ii)(C), removing ''year of such control period.'' and adding in its place ''year of such control period, for a control period before 2023, or by April 1 of the year following the control period, for a control period in 2023 or thereafter; and'';
■ ff. In paragraph (b)(5)(vi), adding ''and'' after the semicolon at the end of the paragraph;
■ gg. Adding a subject heading to paragraph (b)(6) introductory text and removing ''Notwithstanding the provisions of paragraph (b)(1) of this section, a State'' and adding in its place ''A State'';
■ hh. In paragraph (b)(6)(i), removing ''SIP revision.'' and adding in its place ''SIP revision; and'';
■ ii. Revising paragraph (b)(6)(ii);
■ jj. Adding a subject heading to paragraph (b)(7) introductory text, removing ''Notwithstanding the provisions of paragraph (b)(1) of this section, a State'' and adding in its place ''A State'', and adding ''or (iv)'' after ''(b)(2)(iii)'';
■ kk. Revising paragraphs (b)(8) introductory text and (b)(8)(ii);
■ ll. In paragraph (b)(8)(iii)(A)(*2*), removing the period at the end of the paragraph and adding in its place a semicolon;
■ mm. In paragraph (b)(8)(iii)(B), removing ''the following dates:'' and adding in its place ''the dates in Table 5 to this paragraph (b)(8)(iii)(B);'', adding a heading to the table, and revising the table entry for ''2025 and any year thereafter'';
■ nn. In paragraph (b)(8)(iii)(C), removing ''year of such control period.'' and adding in its place ''year of such control period, for a control period before 2023, or by April 1 of the year following the control period, for a control period in 2023 or thereafter; and'';
■ oo. Adding a subject heading to paragraph (b)(9) introductory text, removing ''Notwithstanding the provisions of paragraph (b)(1) of this section, a State'' and adding in its place ''A State'', and adding ''or (iv)'' after ''(b)(2)(iii)'' wherever ''(b)(2)(iii)'' appears;
■ pp. Revising paragraph (b)(9)(ii);
■ qq. In paragraph (b)(9)(iii)(A)(*2*), removing the period at the end of the paragraph and adding in its place a semicolon;
■ rr. In paragraph (b)(9)(iii)(B), removing ''the following dates:'' and adding in its place ''the dates in Table 6 to this paragraph (b)(9)(iii)(B);'', adding a heading to the table, and

revising the table entry for ''2025 and any year thereafter'';
■ ss. In paragraph (b)(9)(iii)(C), removing ''year of such control period.'' and adding in its place ''year of such control period, for a control period before 2023, or by April 1 of the year following the control period, for a control period in 2023 or thereafter; and'';
■ tt. In paragraph (b)(9)(vii), adding ''and'' after the semicolon at the end of the paragraph;
■ uu. Revising paragraphs (b)(10) and (11);
■ vv. Redesignating paragraphs (b)(12) and (13) as paragraphs (b)(16) and (17), respectively, and adding new paragraphs (b)(12) through (15), and further redesignating newly redesignated paragraphs (b)(17) introductory text and (b)(17)(i) through (iv) as paragraphs (b)(17)(i) introductory text and (b)(17)(i)(A) through (D), respectively;
■ ww. Adding a subject headings to newly redesignated paragraphs (b)(16) introductory text and (b)(17) introductory text;
■ xx. In newly redesignated paragraph (b)(17)(i)(D), adding ''or (iv)'' after ''(b)(2)(iii)''; and
■ yy. Adding paragraphs (b)(17)(ii) and (b)(18).

The additions and revisions read as follows:

§ 52.38 What are the requirements of the Federal Implementation Plans (FIPs) for the Cross-State Air Pollution Rule (CSAPR) relating to emissions of nitrogen oxides?

(a) *NO_X annual emissions*—(1) *General requirements.* * * *

(2) *Applicability of CSAPR NO_X Annual Trading Program provisions.* * * *

* * * * *

(3) *State-determined allocations of CSAPR NO_X Annual allowances for 2016.* * * *

* * * * *

(4) *Abbreviated SIP revisions replacing certain provisions of the federal CSAPR NO_X Annual Trading Program.* A State listed in paragraph (a)(2)(i) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations replacing specified provisions of subpart AAAAA of part 97 of this chapter for purposes of the State's sources, and not substantively replacing any other provisions, as follows:

(i) * * *

(B) * * *

TABLE 1 TO PARAGRAPH (a)(4)(i)(B)

Year of the control period for which CSAPR NO_X Annual allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
* * * * * * *	
2023 and 2024	June 1 of the fourth year before the year of the control period.
2025 and any year thereafter	June 1 of the third year before the year of the control period.

* * * * *

(5) *Full SIP revisions adopting State CSAPR NO_X Annual Trading Programs.* * * *

(i) * * *

(B) * * *

TABLE 2 TO PARAGRAPH (a)(5)(i)(B)

Year of the control period for which CSAPR NO_X Annual allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
* * * * * * *	
2023 and 2024	June 1 of the fourth year before the year of the control period.
2025 and any year thereafter	June 1 of the third year before the year of the control period.

* * * * *

(6) *Withdrawal of CSAPR FIP provisions relating to NO_X annual emissions.* * * *

(7) *Continued applicability of certain federal trading program provisions for NO_X annual emissions.* (i) Notwithstanding the provisions of paragraph (a)(6) of this section or any State's SIP, when carrying out the functions of the Administrator under any State CSAPR NO_X Annual Trading Program pursuant to a SIP revision approved under this section, the Administrator will apply the following provisions of this section, as amended, and the following provisions of subpart AAAAA of part 97 of this chapter, as amended, with regard to the State and any source subject to such State trading program:

(A) The definitions in § 97.402 of this chapter;

(B) The provisions in § 97.410(a) of this chapter concerning the amounts of the new unit set-asides;

(C) The provisions in §§ 97.411(b)(1) and 97.412(a) of this chapter concerning the procedures for allocating CSAPR NO_X Annual allowances from new unit set-asides (except where the State allocates or auctions such allowances under an approved SIP revision);

(D) The provisions in § 97.411(c)(5) of this chapter concerning the disposition of incorrectly allocated CSAPR NO_X Annual allowances;

(E) The provisions in § 97.421(f), (g), and (i) of this chapter concerning the deadlines for recordation of CSAPR NO_X Annual allowances allocated in accordance with § 97.411(a) or § 97.412(a) of this chapter or allocated or auctioned under an approved SIP revision and the provisions in paragraphs (a)(4)(i)(B) and (C) and (a)(5)(i)(B) and (C) of this section concerning the deadlines for submission to the Administrator of State-determined allocations or auction results; and

(F) The provisions in § 97.425(b) of this chapter concerning the procedures for administering the assurance provisions.

(ii) Notwithstanding the provisions of paragraph (a)(6) of this section, if, at the time of any approval of a State's SIP revision under this section, the

Administrator has already started recording any allocations of CSAPR NO_X Annual allowances under subpart AAAAA of part 97 of this chapter to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(8) *States with approved SIP revisions addressing the CSAPR NO_X Annual Trading Program.* * * *

* * * * *

(b) *NO_X ozone season emissions*—(1) *General requirements.* The CSAPR NO_X Ozone Season Group 1 Trading Program provisions, the CSAPR NO_X Ozone Season Group 2 Trading Program provisions, and the CSAPR NO_X Ozone Season Group 3 Trading Program provisions set forth respectively in subparts BBBBB, EEEEE, and GGGGG of part 97 of this chapter constitute the CSAPR Federal Implementation Plan provisions that relate to emissions of NO_X during the ozone season (defined as May 1 through September 30 of a calendar year), except as otherwise provided in this section.

(2) *Applicability of CSAPR NO_X Ozone Season Group 1, Group 2, and Group 3 Trading Program provisions.* * * *

* * * * *

(iii) The provisions of subpart EEEEE of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2017 and each subsequent year: Alabama, Arkansas, Iowa, Kansas, Mississippi, Missouri, Oklahoma, Tennessee, Texas, and Wisconsin.

(iv) The provisions of subpart EEEEE of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2017, 2018, 2019, and 2020 only, except as provided in paragraph (b)(15)(iii) of this section: Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia.

(v) The provisions of subpart GGGGG of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2021 and each subsequent year: Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia.

(3) *State-determined allocations of CSAPR NO_X Ozone Season Group 1 allowances for 2016.* * * *

* * * * *

(4) *Abbreviated SIP revisions replacing certain provisions of the federal CSAPR NO_X Ozone Season Group 1 Trading Program.* A State listed in paragraph (b)(2)(i) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations replacing specified provisions of subpart BBBBB of part 97 of this chapter for the State's sources, and not substantively replacing any other provisions, as follows:

* * * * *

(ii) * * *

(B) * * *

TABLE 3 TO PARAGRAPH (b)(4)(ii)(B)

Year of the control period for which CSAPR NO_X Ozone Season Group 1 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
* * * * * * *	
2023 and 2024	June 1 of the fourth year before the year of the control period.
2025 and any year thereafter	June 1 of the third year before the year of the control period.

* * * * *

(5) *Full SIP revisions adopting State CSAPR NO_X Ozone Season Group 1 Trading Programs.* * * *

* * * * *

(ii) * * *

(B) * * *

TABLE 4 TO PARAGRAPH (b)(5)(ii)(B)

Year of the control period for which CSAPR NO_X Ozone Season Group 1 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
* * * * * * *	
2023 and 2024	June 1 of the fourth year before the year of the control period.
2025 and any year thereafter	June 1 of the third year before the year of the control period.

* * * * *

(6) *Full SIP revisions to voluntarily join the CSAPR NO_X Ozone Season Group 2 Trading Program.* * * *

* * * * *

(ii) Following promulgation of an approval by the Administrator of such a SIP revision, the provisions of the SIP revision will apply to sources in the State with regard to emissions occurring in the control period that begins May 1 immediately after promulgation of such approval, or such later control period as may be adopted by the State in its regulations and approved by the Administrator in the SIP revision, and in each subsequent control period, except as provided in paragraph (b)(15) of this section.

(7) *State-determined allocations of CSAPR NO_X Ozone Season Group 2 allowances for 2018.* * * *

* * * * *

(8) *Abbreviated SIP revisions replacing certain provisions of the federal CSAPR NO_X Ozone Season Group 2 Trading Program.* A State listed in paragraph (b)(2)(iii) or (iv) of this section may adopt and include in a SIP revision, and the Administrator will

approve, regulations replacing specified provisions of subpart EEEEE of part 97 of this chapter for the State's sources, and not substantively replacing any other provisions, as follows:

* * * * *

(ii) The State may adopt, as applicability provisions replacing the provisions in § 97.804(a) and (b) of this chapter with regard to the State, provisions substantively identical to those provisions, except that applicability is expanded to include all other units (beyond any units to which applicability could be expanded under paragraph (b)(8)(i) of this section) that would have been subject to any emissions trading program regulations approved as a SIP revision for the State under § 51.121 of this chapter; and

(iii) * * *

(B) * * *

TABLE 5 TO PARAGRAPH (b)(8)(iii)(B)

Year of the control period for which CSAPR NO_X Ozone Season Group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
* * * * * * *	
2025 and any year thereafter	June 1 of the third year before the year of the control period.

* * * * *

(9) *Full SIP revisions adopting State CSAPR NO_X Ozone Season Group 2 Trading Programs.* * * *

* * * * *

(ii) May adopt, as applicability provisions replacing the provisions in § 97.804(a) and (b) of this chapter with regard to the State, provisions substantively identical to those provisions, except that applicability is expanded to include all other units (beyond any units to which applicability could be expanded under paragraph (b)(9)(i) of this section) that would have been subject to any emissions trading program regulations approved as a SIP revision for the State under § 51.121 of this chapter;

(iii) * * *

(B) * * *

TABLE 6 TO PARAGRAPH (b)(9)(iii)(B)

Year of the control period for which CSAPR NO_X Ozone Season Group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
* * * * * * *	
2025 and any year thereafter	June 1 of the third year before the year of the control period.

* * * * *

(10) *Full SIP revisions to voluntarily join the CSAPR NO_X Ozone Season Group 3 Trading Program.* A State listed in paragraph (b)(2)(i) or (iii) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(i), and (b)(3) and (4) of this section or paragraphs (b)(1), (b)(2)(iii), and (b)(7) and (8) of this section, as applicable, with regard to sources in the State (but not sources in any Indian country within the borders of the State), regulations that are substantively identical to the provisions of the CSAPR NO_X Ozone Season Group 3 Trading Program set forth in §§ 97.1002 through 97.1035 of this chapter, subject to the following requirements and exceptions:

(i) The provisions of paragraphs (b)(13)(i) through (viii) of this section apply to any such SIP revision; and

(ii) Following promulgation of an approval by the Administrator of such a SIP revision, the provisions of the SIP revision will apply to sources in the State with regard to emissions occurring in the control period that begins May 1 immediately after promulgation of such approval, or such later control period as may be adopted by the State in its regulations and approved by the Administrator in the SIP revision, and in each subsequent control period, except as provided in paragraph (b)(15) of this section.

(11) *State-determined allocations of CSAPR NO_X Ozone Season Group 3 allowances for 2022.* A State listed in paragraph (b)(2)(v) of this section may adopt and include in a SIP revision, and the Administrator will approve, as CSAPR NO_X Ozone Season Group 3 allowance allocation provisions replacing the provisions in § 97.1011(a) of this chapter with regard to the State and the control period in 2022, a list of CSAPR NO_X Ozone Season Group 3 units and the amount of CSAPR NO_X Ozone Season Group 3 allowances allocated to each unit on such list, provided that the list of units and allocations meets the following requirements:

(i) All of the units on the list must be units that are in the State and commenced commercial operation before January 1, 2019;

(ii) The total amount of CSAPR NO_X Ozone Season Group 3 allowance allocations on the list must not exceed the amount, under § 97.1010(a) of this chapter for the State and the control period in 2022, of the CSAPR NO_X Ozone Season Group 3 trading budget minus the sum of the new unit set-aside and Indian country new unit set-aside;

(iii) The list must be submitted electronically in a format specified by the Administrator; and

(iv) The SIP revision must not provide for any change in the units and allocations on the list after approval of the SIP revision by the Administrator and must not provide for any change in any allocation determined and recorded by the Administrator under subpart GGGGG of part 97 of this chapter;

(v) Provided that:

(A) By [DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], the State must notify the Administrator electronically in a format specified by the Administrator of the State's intent to submit to the Administrator a complete SIP revision meeting the requirements of paragraphs (b)(11)(i) through (iv) of this section by [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**]; and

(B) The State must submit to the Administrator a complete SIP revision described in paragraph (b)(11)(v)(A) of this section by [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**].

(12) *Abbreviated SIP revisions replacing certain provisions of the federal CSAPR NO_X Ozone Season Group 3 Trading Program.* A State listed in paragraph (b)(2)(v) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations replacing specified provisions of subpart GGGGG of part 97 of this chapter for the State's sources, and not substantively replacing any other provisions, as follows:

(i) The State may adopt, as applicability provisions replacing the provisions in § 97.1004(a)(1) and (2) of this chapter with regard to the State, provisions substantively identical to those provisions, except that the words ''more than 25 MWe'' are replaced, wherever such words appear, by words specifying a uniform lower limit on the amount of megawatts that is not greater than the amount specified by the words ''more than 25 MWe'' and is not less than the amount specified by the words ''15 MWe or more'';

(ii) The State may adopt, as applicability provisions replacing the provisions in § 97.1004(a) and (b) of this chapter with regard to the State, provisions substantively identical to those provisions, except that applicability is expanded to include all other units (beyond any units to which applicability could be expanded under paragraph (b)(12)(i) of this section) that would have been subject to any emissions trading program regulations approved as a SIP revision for the State under § 51.121 of this chapter; and

(iii) The State may adopt, as CSAPR NO_X Ozone Season Group 3 allowance allocation or auction provisions replacing the provisions in §§ 97.1011(a) and (b)(1) and 97.1012(a) of this chapter with regard to the State and the control period in 2023 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR NO_X Ozone Season Group 3 allowances and may adopt, in addition to the definitions in § 97.1002 of this chapter, one or more definitions that shall apply only to terms as used in the adopted CSAPR NO_X Ozone Season Group 3 allowance allocation or auction provisions, if such methodology—

(A) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR NO_X Ozone Season Group 3 allowances for any such control period not exceeding the amount, under §§ 97.1010(a) and 97.1021 of this chapter for the State and such control period, of the CSAPR NO_X Ozone Season Group 3 trading budget minus the sum of the Indian country new unit set-aside and the amount of any CSAPR NO_X Ozone Season Group 3 allowances already allocated and recorded by the Administrator, plus, if the State adopts regulations expanding applicability to additional units pursuant to paragraph (b)(12)(ii) of this section, an additional amount of CSAPR NO_X Ozone Season Group 3 allowances not exceeding the lesser of:

(*1*) The highest of the sum, for all additional units in the State to which applicability is expanded pursuant to paragraph (b)(12)(ii) of this section, of the NO_X emissions reported in accordance with part 75 of this chapter for the ozone season in the year before the year of the submission deadline for the SIP revision under paragraph (b)(12)(iv) of this section and the corresponding sums of the NO_X emissions reported in accordance with part 75 of this chapter for each of the two immediately preceding ozone seasons, provided that each such seasonal sum shall exclude the amount of any NO_X emissions reported by any unit for all hours in any calendar day during which the unit did not have at least one quality-assured monitor operating hour, as defined in § 72.2 of this chapter; or

(*2*) The portion of the emissions budget under the State's emissions trading program regulations approved as a SIP revision under § 51.121 of this chapter that is attributable to the units to which applicability is expanded pursuant to paragraph (b)(12)(ii) of this section;

(B) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO_X Ozone Season Group 3 allowances for any such control period to any CSAPR NO_X Ozone Season Group 3 units covered by § 97.1011(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR NO_X Ozone Season Group 3 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator no later than the dates in Table 7 to this paragraph (b)(12)(iii)(B);

TABLE 7 TO PARAGRAPH (b)(12)(iii)(B)

Year of the control period for which CSAPR NO_X Ozone Season Group 3 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2023	June 1, 2022.
2024	June 1, 2022.
2025	June 1, 2023.
2026	June 1, 2023.
2027 and any year thereafter	June 1 of the third year before the year of the control period.

(C) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO_X Ozone Season Group 3 allowances for any such control period to any CSAPR NO_X Ozone Season Group 3 units covered by §§ 97.1011(b)(1) and 97.1012(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions (except allocations or results of auctions to such units of CSAPR NO_X Ozone Season Group 3 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by April 1 of the year following the year of such control period; and

(D) Does not provide for any change, after the submission deadlines in paragraphs (b)(12)(iii)(B) and (C) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart GGGGG of part 97 of this chapter, § 97.526(c) of this chapter, or § 97.826(c) of this chapter;

(iv) Provided that the State must submit a complete SIP revision meeting the requirements of paragraph (b)(12)(i), (ii), or (iii) of this section by December

1 of the year before the year of the deadlines for submission of allocations or auction results under paragraphs (b)(12)(iii)(B) and (C) of this section applicable to the first control period for which the State wants to replace the applicability provisions, make allocations, or hold an auction under paragraph (b)(12)(i), (ii), or (iii) of this section.

(13) *Full SIP revisions adopting State CSAPR NO_X Ozone Season Group 3 Trading Programs.* A State listed in paragraph (b)(2)(v) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(v), and (b)(11) and (12) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State), regulations that are substantively identical to the provisions of the CSAPR NO_X Ozone Season Group 3 Trading Program set forth in §§ 97.1002 through 97.1035 of this chapter, except that the SIP revision:

(i) May adopt, as applicability provisions replacing the provisions in § 97.1004(a)(1) and (2) of this chapter with regard to the State, provisions substantively identical to those provisions, except that the words ''more than 25 MWe'' are replaced, wherever such words appear, by words specifying a uniform lower limit on the amount of megawatts that is not greater than the amount specified by the words ''more than 25 MWe'' and is not less than the amount specified by the words ''15 MWe or more'';

(ii) May adopt, as applicability provisions replacing the provisions in § 97.1004(a) and (b) of this chapter with regard to the State, provisions substantively identical to those provisions, except that applicability is expanded to include all other units (beyond any units to which applicability could be expanded under paragraph (b)(13)(i) of this section) that would have been subject to any emissions trading program regulations approved as a SIP revision for the State under § 51.121 of this chapter;

(iii) May adopt, as CSAPR NO_X Ozone Season Group 3 allowance allocation provisions replacing the provisions in §§ 97.1011(a) and (b)(1) and 97.1012(a) of this chapter with regard to the State and the control period in 2023 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR NO_X Ozone Season Group 3 allowances and that—

(A) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR NO_X Ozone Season Group 3 allowances for any such control period not exceeding the amount, under §§ 97.1010(a) and 97.1021 of this chapter for the State and such control period, of the CSAPR NO_X Ozone Season Group 3 trading budget minus the sum of the Indian country new unit set-aside and the amount of any CSAPR NO_X Ozone Season Group 3 allowances already allocated and recorded by the Administrator, plus, if the State adopts regulations expanding applicability to additional units pursuant to paragraph (b)(13)(ii) of this section, an additional amount of CSAPR NO_X Ozone Season Group 3 allowances not exceeding the lesser of:

(*1*) The highest of the sum, for all additional units in the State to which applicability is expanded pursuant to paragraph (b)(13)(ii) of this section, of the NO_X emissions reported in accordance with part 75 of this chapter for the ozone season in the year before the year of the submission deadline for the SIP revision under paragraph (b)(13)(viii) of this section and the corresponding sums of the NO_X emissions reported in accordance with part 75 of this chapter for each of the two immediately preceding ozone seasons, provided that each such seasonal sum shall exclude the amount of any NO_X emissions reported by any unit for all hours in any calendar day during which the unit did not have at least one quality-assured monitor operating hour, as defined in § 72.2 of this chapter; or

(*2*) The portion of the emissions budget under the State's emissions trading program regulations approved as a SIP revision under § 51.121 of this chapter that is attributable to the units to which applicability is expanded pursuant to paragraph (b)(13)(ii) of this section;

(B) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO_X Ozone Season Group 3 allowances for any such control period to any CSAPR NO_X Ozone Season Group 3 units covered by § 97.1011(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR NO_X Ozone Season Group 3 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator no later than the dates in Table 8 to this paragraph (b)(13)(iii)(B);

TABLE 8 TO PARAGRAPH (b)(13)(iii)(B)

Year of the control period for which CSAPR NO_X Ozone Season Group 3 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2023	June 1, 2022.
2024	June 1, 2022.
2025	June 1, 2023.
2026	June 1, 2023.
2027 and any year thereafter	June 1 of the third year before the year of the control period.

(C) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO_X Ozone Season Group 3 allowances for any such control period to any CSAPR NO_X Ozone Season Group 3 units covered by §§ 97.1011(b)(1) and 97.1012(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions (except allocations or results of auctions to such units of CSAPR NO_X Ozone Season Group 3 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by April 1 of the year following the year of such control period; and

(D) Does not provide for any change, after the submission deadlines in paragraphs (b)(13)(iii)(B) and (C) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart GGGGG of part 97 of this chapter, § 97.526(c) of this chapter, or § 97.826(c) of this chapter;

(iv) May adopt, in addition to the definitions in § 97.1002 of this chapter, one or more definitions that shall apply only to terms as used in the CSAPR NO_X Ozone Season Group 3 allowance allocation or auction provisions adopted under paragraph (b)(13)(iii) of this section;

(v) May substitute the name of the State for the term ''State'' as used in subpart GGGGG of part 97 of this chapter, to the extent the Administrator determines that such substitutions do not make substantive changes in the provisions in §§ 97.1002 through 97.1035 of this chapter; and

(vi) Must not include any of the requirements imposed on any unit in Indian country within the borders of the State in the provisions in §§ 97.1002 through 97.1035 of this chapter and must not include the provisions in §§ 97.1011(b)(2) and (c)(5)(iii), 97.1012(b), and 97.1021(h) and (j) of this chapter, all of which provisions will continue to apply under any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision;

(vii) Provided that, if and when any covered unit is located in Indian country within the borders of the State, the Administrator may modify his or her approval of the SIP revision to exclude the provisions in §§ 97.1002 (definitions of ''base CSAPR NO_X Ozone Season Group 3 source'', ''base CSAPR NO_X Ozone Season Group 3 unit'', ''common designated representative'', ''common designated representative's assurance level'', and ''common designated representative's share''), 97.1006(c)(2), and 97.1025 of this chapter and the portions of other provisions of subpart GGGGG of part 97 of this chapter referencing these sections and may modify any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision to include these provisions; and

(viii) Provided that the State must submit a complete SIP revision meeting the requirements of paragraphs (b)(13)(i) through (vi) of this section by December 1 of the year before the year of the deadlines for submission of allocations or auction results under paragraphs (b)(13)(iii)(B) and (C) of this section applicable to the first control period for which the State wants to replace the applicability provisions, make allocations, or hold an auction under paragraph (b)(13)(i), (ii), or (iii) of this section.

(14) *Withdrawal of CSAPR FIP provisions relating to NO_X ozone season emissions.* Following promulgation of an approval by the Administrator of a State's SIP revision as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(i), and (b)(3) and (4) of this section, paragraphs (b)(1), (b)(2)(iii) or (iv), and (b)(7) and (8) of this section, or paragraphs (b)(1), (b)(2)(v), and (b)(11) and (12) of this section for sources in the State—

(i) Except as provided in paragraph (b)(15) of this section, the provisions of paragraph (b)(2)(i), (iii), (iv), or (v) of this section, as applicable, will no longer apply to sources in the State, unless the Administrator's approval of the SIP revision is partial or conditional, and will continue to apply to sources in any Indian country within the borders of the State, provided that if the CSAPR Federal Implementation Plan was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision; and

(ii) For a State listed in § 51.121(c) of this chapter, the State's adoption of the regulations included in such approved SIP revision will satisfy with regard to the sources subject to such regulations, including any sources made subject to such regulations pursuant to paragraph (b)(9)(ii) or (b)(13)(ii) of this section, the requirement under § 51.121(r)(2) of this chapter for the State to revise its SIP to adopt control measures with regard to such sources, provided that the Administrator and the State continue to carry out their respective functions under such regulations.

(15) *Continued applicability of certain federal trading program provisions for NO_X ozone season emissions.* (i) Notwithstanding the provisions of paragraph (b)(14)(i) of this section or any State's SIP, when carrying out the functions of the Administrator under any State CSAPR NO_X Ozone Season Group 1 Trading Program or State CSAPR NO_X Ozone Season Group 2 Trading Program pursuant to a SIP revision approved under this section, the Administrator will apply the following provisions of this section, as amended, and the following provisions of subpart BBBBB of part 97 of this chapter, as amended, or subpart EEEEE of part 97 of this chapter, as amended, with regard to the State and any source subject to such State trading program:

(A) The definitions in § 97.502 of this chapter or § 97.802 of this chapter;

(B) The provisions in § 97.510(a) of this chapter concerning the amounts of the new unit set-asides;

(C) The provisions in §§ 97.511(b)(1) and 97.512(a) of this chapter or §§ 97.811(b)(1) and 97.812(a) of this chapter concerning the procedures for allocating CSAPR NO_X Ozone Season Group 1 allowances or CSAPR NO_X Ozone Season Group 2 allowances from new unit set-asides (except where the State allocates or auctions such allowances under an approved SIP revision);

(D) The provisions in § 97.511(c)(5) of this chapter or § 97.811(c)(5) of this chapter concerning the disposition of incorrectly allocated CSAPR NO_X Ozone Season Group 1 allowances or CSAPR NO_X Ozone Season Group 2 allowances;

(E) The provisions in § 97.521(f), (g), and (i) of this chapter or § 97.821(f), (g), and (i) of this chapter concerning the deadlines for recordation of CSAPR NO_X Ozone Season Group 1 allowances or CSAPR NO_X Ozone Season Group 2 allowances allocated in accordance with § 97.511(a) or § 97.512(a) of this chapter or § 97.811(a) or § 97.812(a) of this chapter or allocated or auctioned under an approved SIP revision and the provisions in paragraphs (b)(4)(ii)(B) and (C) and (b)(5)(ii)(B) and (C) of this section or paragraphs (b)(8)(iii)(B) and (C) and (b)(9)(iii)(B) and (C) of this section concerning the deadlines for submission to the Administrator of State-determined allocations or auction results; and

(F) The provisions in § 97.525(b) of this chapter or § 97.825(b) of this chapter concerning the procedures for administering the assurance provisions.

(ii) Notwithstanding the provisions of paragraph (b)(6)(ii), (b)(10)(ii), or (b)(14)(i) of this section, if, at the time of any approval of a State's SIP revision under this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 1 allowances under subpart BBBBB of part 97 of this chapter, or allocations of CSAPR NO_X Ozone Season Group 2 allowances under subpart EEEEE of part 97 of this chapter, or allocations of CSAPR NO_X Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter, to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to units in the State for each such control period, including the provisions of §§ 97.526(c) and 97.826(c) of this chapter, shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(iii) Notwithstanding any discontinuation of the applicability of other provisions of subpart BBBBB or EEEEE of part 97 of this chapter to the sources in a State pursuant to paragraph

(b)(2)(ii) or (iv) or (b)(14)(i) of this section, the following provisions shall continue to apply with regard to all CSAPR NO_X Ozone Season Group 1 allowances and CSAPR NO_X Ozone Season Group 2 allowances at any time allocated to or held by any source or other entity in the State and to all sources or other entities, wherever located, that received or at any time hold such allowances:

(A) The provisions of § 97.526(c)(1) through (6) of this chapter authorizing the Administrator to remove CSAPR NO_X Ozone Season Group 1 allowances from any Allowance Management System account where such CSAPR NO_X Ozone Season Group 1 allowances are held and to allocate and record amounts of CSAPR NO_X Ozone Season Group 2 allowances or CSAPR NO_X Ozone Season Group 3 allowances in place of any CSAPR NO_X Ozone Season Group 1 allowances that have been so removed or that have not been initially recorded, and the provisions of § 97.526(c)(7) of this chapter authorizing the use of CSAPR NO_X Ozone Season Group 2 allowances or CSAPR NO_X Ozone Season Group 3 allowances to satisfy requirements to hold CSAPR NO_X Ozone Season Group 1 allowances;

(B) The provisions of § 97.826(c)(1) through (6) of this chapter authorizing the Administrator to remove CSAPR NO_X Ozone Season Group 2 allowances from any Allowance Management System account where such CSAPR NO_X Ozone Season Group 2 allowances are held and to allocate and record amounts of CSAPR NO_X Ozone Season Group 3 allowances in place of any CSAPR NO_X Ozone Season Group 2 allowances that have been so removed or that have not been initially recorded, and the provisions of § 97.826(c)(7) of this chapter authorizing the use of CSAPR NO_X Ozone Season Group 3 allowances to satisfy requirements to hold CSAPR NO_X Ozone Season Group 2 allowances; and

(C) The provisions of § 97.811(d) of this chapter recalling all allocations of CSAPR NO_X Ozone Season Group 2 allowances for control periods after 2020 to sources and other entities in States listed in paragraph (b)(2)(iv) of this section, requiring such sources and other entities to surrender of equal amounts of CSAPR NO_X Ozone Season Group 2 allowances allocated for the same control periods to accomplish such recalls, authorizing the Administrator to record the removal of such surrendered CSAPR NO_X Ozone Season Group 2 allowances from any Allowance Management Account, and establishing potential remedies for any failure to comply with such surrender requirements.

(16) *States with approved SIP revisions addressing the CSAPR NO_X Ozone Season Group 1 Trading Program.* * * *

* * * * *

(17) *States with approved SIP revisions addressing the CSAPR NO_X Ozone Season Group 2 Trading Program.* * * *

* * * * *

(ii) Notwithstanding any provision of subpart EEEEE of part 97 of this chapter or any State's SIP, with regard to any State listed in paragraph (b)(2)(iv) of this section and any control period that begins after December 31, 2020, the Administrator will not carry out any of the functions set forth for the Administrator in subpart EEEEE of part 97 of this chapter, except §§ 97.811(d) and 97.826(c) of this chapter, or in any emissions trading program provisions in a State's SIP approved under paragraph (b)(8) or (9) of this section.

(18) *States with approved SIP revisions addressing the CSAPR NO_X Ozone Season Group 3 Trading Program.* The following States have SIP revisions approved by the Administrator under paragraph (b)(10), (11), (12), or (13) of this section:

(i) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(10) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(i), and (b)(3) and (4) of this section or paragraphs (b)(1), (b)(2)(iii), and (b)(7) and (8) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State): [none].

(ii) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(11) of this section as replacing the CSAPR NO_X Ozone Season Group 3 allowance allocation provisions in § 97.1011(a) of this chapter with regard to the State and the control period in 2022: [none].

(iii) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(12) of this section as replacing the CSAPR NO_X Ozone Season Group 3 applicability provisions in § 97.1004(a) and (b) or § 97.1004(a)(1) and (2) of this chapter or the CSAPR NO_X Ozone Season Group 2 allowance allocation provisions in §§ 97.1011(a) and (b)(1) and 97.1012(a) of this chapter with regard to the State and the control period in 2023 or any subsequent year: [none].

(iv) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(13) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(v), and (b)(11) and (12) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State): [none].

■ 3. Amend § 52.39 by:

■ a. Adding a subject heading to paragraph (a) and removing ''(SO_2).'' and adding in its place ''(SO_2), except as otherwise provided in this section.'';

■ b. Adding a subject heading to paragraph (b);

■ c. Adding a subject heading to paragraph (c);

■ d. Adding a subject heading to paragraph (d) introductory text and removing ''Notwithstanding the provisions of paragraph (a) of this section, a State'' and adding in its place ''A State'';

■ e. Revising paragraph (e) introductory text;

■ f. In paragraph (e)(1)(i), removing the period at the end of the paragraph and adding in its place a semicolon;

■ g. In paragraph (e)(1)(ii), removing ''the following dates:'' and adding in its place ''the dates in Table 1 to this paragraph (e)(1)(ii);'', adding a heading to the table, removing the table entry for ''2023 and any year thereafter'', and adding table entries for ''2023 and 2024'' and ''2025 and any year thereafter'';

■ h. In paragraph (e)(1)(iii), removing ''year of such control period.'' and adding in its place ''year of such control period, for a control period before 2023, or by April 1 of the year following the control period, for a control period in 2023 or thereafter; and'';

■ i. Adding a subject heading to paragraph (f) introductory text and removing ''Notwithstanding the provisions of paragraph (a) of this section, a State'' and adding in its place ''A State'';

■ j. In paragraph (f)(1)(i), removing the period at the end of the paragraph and adding in its place a semicolon;

■ k. In paragraph (f)(1)(ii), removing ''the following dates:'' and adding in its place ''the dates in Table 2 to this paragraph (f)(1)(ii);'', adding a heading to the table, removing the table entry for ''2023 and any year thereafter'', and adding table entries for ''2023 and 2024'' and ''2025 and any year thereafter'';

■ l. In paragraph (f)(1)(iii), removing ''year of such control period.'' and adding in its place ''year of such control period, for a control period before 2023, or by April 1 of the year following the

control period, for a control period in 2023 or thereafter; and'';

■ m. In paragraph (f)(5), adding ''and'' after the semicolon at the end of the paragraph;

■ n. Adding a subject heading to paragraph (g) introductory text and removing ''Notwithstanding the provisions of paragraph (a) of this section, a State'' and adding in its place ''A State'';

■ o. Revising paragraph (h) introductory text;

■ p. In paragraph (h)(1)(i), removing the period at the end of the paragraph and adding in its place a semicolon;

■ q. In paragraph (h)(1)(ii), removing ''the following dates:'' and adding in its place ''the dates in Table 3 to this paragraph (h)(1)(ii);'', adding a heading to the table, removing the table entry for ''2023 and any year thereafter'', and adding table entries for ''2023 and 2024'' and ''2025 and any year thereafter'';

■ r. In paragraph (h)(1)(iii), removing ''year of such control period.'' and adding in its place ''year of such control period, for a control period before 2023, or by April 1 of the year following the control period, for a control period in 2023 or thereafter; and'';

■ s. Adding a subject heading to paragraph (i) introductory text and removing ''Notwithstanding the provisions of paragraph (a) of this section, a State'' and adding in its place ''A State'';

■ t. In paragraph (i)(1)(i), removing the period at the end of the paragraph and adding in its place a semicolon;

■ u. In paragraph (i)(1)(ii), removing ''the following dates:'' and adding in its place ''the dates in Table 4 to this paragraph (i)(1)(ii);'', adding a heading to the table, removing the table entry for ''2023 and any year thereafter'', and adding table entries for ''2023 and 2024'' and ''2025 and any year thereafter'';

■ v. In paragraph (i)(1)(iii), removing ''year of such control period.'' and adding in its place ''year of such control period, for a control period before 2023, or by April 1 of the year following the control period, for a control period in 2023 or thereafter; and'';

■ w. In paragraph (i)(5), adding ''and'' after the semicolon at the end of the paragraph;

■ x. Adding a subject heading to paragraph (j) and removing ''Following promulgation'' and adding in its place ''Except as provided in paragraph (k) of this section, following promulgation'';

■ y. Revising paragraph (k); and

■ z. Adding a subject headings to paragraphs (l) introductory text and (m) introductory text.

The additions and revisions read as follows:

§ 52.39 What are the requirements of the Federal Implementation Plans (FIPs) for the Cross-State Air Pollution Rule (CSAPR) relating to emissions of sulfur dioxide?

(a) *General requirements for SO_2 emissions.* * * *

(b) *Applicability of CSAPR SO_2 Group 1 Trading Program provisions.* * * *

(c) *Applicability of CSAPR SO_2 Group 2 Trading Program provisions.* * * *

* * * * *

(d) *State-determined allocations of CSAPR SO_2 Group 1 allowances for 2016.* * * *

* * * * *

(e) *Abbreviated SIP revisions replacing certain provisions of the federal CSAPR SO_2 Group 1 Trading Program.* A State listed in paragraph (b) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations replacing specified provisions of subpart CCCCC of part 97 of this chapter for the State's sources, and not substantively replacing any other provisions, as follows:

(1) * * *

(ii) * * *

TABLE 1 TO PARAGRAPH (e)(1)(ii)

Year of the control period for which CSAPR SO_2 Group 1 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
* * * * * * *	
2023 and 2024	June 1 of the fourth year before the year of the control period.
2025 and any year thereafter	June 1 of the third year before the year of the control period.

* * * * *

(f) *Full SIP revisions adopting State CSAPR SO_2 Group 1 Trading Programs.* * * *

(1) * * *

(ii) * * *

TABLE 2 TO PARAGRAPH (f)(1)(ii)

Year of the control period for which CSAPR SO_2 Group 1 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
* * * * * * *	
2023 and 2024	June 1 of the fourth year before the year of the control period.
2025 and any year thereafter	June 1 of the third year before the year of the control period.

* * * * *

(g) *State-determined allocations of CSAPR SO_2 Group 2 allowances for 2016.* * * *

* * * * *

(h) *Abbreviated SIP revisions replacing certain provisions of the federal CSAPR SO_2 Group 2 Trading Program.* A State listed in paragraph (c)(1) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations replacing specified provisions of subpart DDDDD of part 97 of this chapter for the State's sources, and not substantively replacing any other provisions, as follows:

(1) * * *

(ii) * * *

TABLE 3 TO PARAGRAPH (h)(1)(ii)

Year of the control period for which CSAPR SO_2 Group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
* * * * * * *	
2023 and 2024	June 1 of the fourth year before the year of the control period.
2025 and any year thereafter	June 1 of the third year before the year of the control period.

* * * * *	(i) *Full SIP revisions adopting State CSAPR SO_2 Group 2 Trading Programs.*	(1) * * *
	* * *	(ii) * * *

TABLE 4 TO PARAGRAPH (i)(1)(ii)

Year of the control period for which CSAPR SO_2 Group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
* * * * * * *	
2023 and 2024	June 1 of the fourth year before the year of the control period.
2025 and any year thereafter	June 1 of the third year before the year of the control period.

* * * * *

(j) *Withdrawal of CSAPR FIP provisions relating to SO_2 emissions.* * * *

(k) *Continued applicability of certain federal trading program provisions for SO_2 emissions.* (1) Notwithstanding the provisions of paragraph (j) of this section or any State's SIP, when carrying out the functions of the Administrator under any State CSAPR SO_2 Group 1 Trading Program or State CSAPR SO_2 Group 2 Trading Program pursuant to a SIP revision approved under this section, the Administrator will apply the following provisions of this section, as amended, and the following provisions of subpart CCCCC of part 97 of this chapter, as amended, or subpart DDDDD of part 97 of this chapter, as amended, with regard to the State and any source subject to such State trading program:

(i) The definitions in § 97.602 of this chapter or § 97.702 of this chapter;

(ii) The provisions in § 97.610(a) of this chapter or § 97.710(a) of this chapter concerning the amounts of the new unit set-asides;

(iii) The provisions in §§ 97.611(b)(1) and 97.612(a) of this chapter or §§ 97.711(b)(1) and 97.712(a) of this chapter concerning the procedures for allocating CSAPR SO_2 Group 1 allowances or CSAPR SO_2 Group 2 allowances from new unit set-asides (except where the State allocates or auctions such allowances under an approved SIP revision);

(iv) The provisions in § 97.611(c)(5) of this chapter or § 97.711(c)(5) of this chapter concerning the disposition of incorrectly allocated CSAPR SO_2 Group 1 allowances or CSAPR SO_2 Group 2 allowances;

(v) The provisions in § 97.621(f), (g) and (i) of this chapter or § 97.721(f), (g) and (i) of this chapter concerning the deadlines for recordation of CSAPR SO_2 Group 1 allowances or CSAPR SO_2 Group 2 allowances allocated in accordance with § 97.611(a) or § 97.612(a) of this chapter or § 97.711(a) or § 97.712(a) of this chapter or allocated or auctioned under an approved SIP revision and the provisions in paragraphs (e)(1)(ii) and (iii) and (f)(1)(ii) and (iii) of this section or paragraphs (h)(1)(ii) and (iii) and (i)(1)(ii) and (iii) of this section concerning the deadlines for submission to the Administrator of State-determined allocations or auction results; and

(vi) The provisions in § 97.625(b) of this chapter or § 97.725(b) of this chapter concerning the procedures for administering the assurance provisions.

(2) Notwithstanding the provisions of paragraph (i) of this section, if, at the time of an approval of a State's SIP revision under this section, the Administrator has already started recording any allocations of CSAPR SO_2 Group 1 allowances under subpart CCCCC of part 97 of this chapter, or allocations of CSAPR SO_2 Group 2 allowances under subpart DDDDD of part 97 of this chapter, to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(l) *States with approved SIP revisions addressing the CSAPR SO_2 Group 1 Trading Program.* * * *

* * * * *

(m) *States with approved SIP revisions addressing the CSAPR SO_2 Group 2 Trading Program.* * * *

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Subpart O—Illinois

■ 4. Amend § 52.731 by revising paragraphs (b)(2) and (3) and adding paragraph (b)(4) to read as follows:

§ 52.731 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) * * *

(2) The owner and operator of each source and each unit located in the State of Illinois and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017, 2018, 2019, and 2020. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Illinois' State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iv), except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was

promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(3) The owner and operator of each source and each unit located in the State of Illinois and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Illinois' State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v), except to the extent the Administrator's approval is partial or conditional.

(4) Notwithstanding the provisions of paragraphs (b)(2) and (3) of this section, the provisions of §§ 97.526(c), 97.826(c), and 97.811(d) of this chapter shall apply with respect to each source or other entity located in the State and all CSAPR NO_X Ozone Season Group 1 allowances or CSAPR NO_X Ozone Season Group 2 allowances at any time allocated to or held by any such source or other entity. Further, if, at the time of the approval of Illinois' SIP revision described in paragraph (b)(2) or (3) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances or CSAPR NO_X Ozone Season Group 3 allowances under subpart EEEEE or GGGGG, respectively, of part 97 of this chapter to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

Subpart P—Indiana

■ 5. Amend § 52.789 by revising paragraphs (b)(2) and (3) and adding paragraph (b)(4) to read as follows:

§ 52.789 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) * * *

(2) The owner and operator of each source and each unit located in the State of Indiana and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017, 2018, 2019, and 2020. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Indiana's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iv), except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(3) The owner and operator of each source and each unit located in the State of Indiana and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Indiana's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v), except to the extent the Administrator's approval is partial or conditional.

(4) Notwithstanding the provisions of paragraphs (b)(2) and (3) of this section, the provisions of §§ 97.526(c), 97.826(c), and 97.811(d) of this chapter shall apply with respect to each source or other entity located in the State and all CSAPR NO_X Ozone Season Group 1 allowances or CSAPR NO_X Ozone Season Group 2 allowances at any time allocated to or held by any such source or other entity. Further, if, at the time of the approval of Indiana's SIP revision described in paragraph (b)(2) or (3) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances or CSAPR NO_X Ozone Season Group 3 allowances under subpart EEEEE of GGGGG, respectively, of part 97 of this chapter to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

Subpart S—Kentucky

■ 6. Amend § 52.940 by revising paragraphs (b)(2) and (3) and adding paragraph (b)(4) to read as follows:

§ 52.940 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) * * *

(2) The owner and operator of each source and each unit located in the State of Kentucky and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017, 2018, 2019, and 2020. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Kentucky's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iv), except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(3) The owner and operator of each source and each unit located in the State of Kentucky and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Kentucky's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v), except to the

extent the Administrator's approval is partial or conditional.

(4) Notwithstanding the provisions of paragraphs (b)(2) and (3) of this section, the provisions of §§ 97.526(c), 97.826(c), and 97.811(d) of this chapter shall apply with respect to each source or other entity located in the State and all CSAPR NO_X Ozone Season Group 1 allowances or CSAPR NO_X Ozone Season Group 2 allowances at any time allocated to or held by any such source or other entity. Further, if, at the time of the approval of Kentucky's SIP revision described in paragraph (b)(2) or (3) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances or CSAPR NO_X Ozone Season Group 3 allowances under subpart EEEEE or GGGGG, respectively, of part 97 of this chapter to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

Subpart T—Louisiana

■ 7. Amend § 52.984 by revising paragraphs (d)(2) and (3) and adding paragraph (d)(4) to read as follows:

§ 52.984 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(d) * * *

(2) The owner and operator of each source and each unit located in the State of Louisiana and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017, 2018, 2019, and 2020. The obligation to comply with such requirements with regard to sources and units in the State will be eliminated by the promulgation of an approval by the Administrator of a revision to Louisiana's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iv) for those sources and units, except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision. The obligation to comply with such requirements with regard to sources and units located in Indian country within the borders of the State will not be eliminated by the promulgation of an approval by the Administrator of a revision to Louisiana's SIP.

(3) The owner and operator of each source and each unit located in the State of Louisiana and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State will be eliminated by the promulgation of an approval by the Administrator of a revision to Louisiana's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v) for those sources and units, except to the extent the Administrator's approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in Indian country within the borders of the State will not be eliminated by the promulgation of an approval by the Administrator of a revision to Louisiana's SIP.

(4) Notwithstanding the provisions of paragraphs (d)(2) and (3) of this section, the provisions of §§ 97.526(c), 97.826(c), and 97.811(d) of this chapter shall apply with respect to each source or other entity located in the State and all CSAPR NO_X Ozone Season Group 1 allowances or CSAPR NO_X Ozone Season Group 2 allowances at any time allocated to or held by any such source or other entity. Further, if, at the time of the approval of Louisiana's SIP revision described in paragraph (d)(2) or (3) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances or CSAPR NO_X Ozone Season Group 3 allowances under subpart EEEEE or GGGGG, respectively, of part 97 of this chapter to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

Subpart V—Maryland

■ 8. Amend § 52.1084 by revising paragraphs (b)(2) and (3) and adding paragraph (b)(4) to read as follows:

§ 52.1084 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) * * *

(2) The owner and operator of each source and each unit located in the State of Maryland and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017, 2018, 2019, and 2020. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Maryland's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iv), except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(3) The owner and operator of each source and each unit located in the State of Maryland and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Maryland's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v), except to the extent the Administrator's approval is partial or conditional.

(4) Notwithstanding the provisions of paragraphs (b)(2) and (3) of this section, the provisions of §§ 97.526(c), 97.826(c), and 97.811(d) of this chapter shall apply with respect to each source or other

entity located in the State and all CSAPR NO_X Ozone Season Group 1 allowances or CSAPR NO_X Ozone Season Group 2 allowances at any time allocated to or held by any such source or other entity. Further, if, at the time of the approval of Maryland's SIP revision described in paragraph (b)(2) or (3) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances or CSAPR NO_X Ozone Season Group 3 allowances under subpart EEEEE or GGGGG, respectively, of part 97 of this chapter to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

Subpart X—Michigan

■ 9. Amend § 52.1186 by revising paragraphs (e)(2) and (3) and adding paragraph (e)(4) to read as follows:

§ 52.1186 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(e) * * *

(2) The owner and operator of each source and each unit located in the State of Michigan and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017, 2018, 2019, and 2020. The obligation to comply with such requirements with regard to sources and units in the State will be eliminated by the promulgation of an approval by the Administrator of a revision to Michigan's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iv) for those sources and units, except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision. The obligation to comply with such requirements with regard to sources and units located in Indian country within the borders of the State will not be eliminated by the promulgation of an approval by the Administrator of a revision to Michigan's SIP.

(3) The owner and operator of each source and each unit located in the State of Michigan and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State will be eliminated by the promulgation of an approval by the Administrator of a revision to Michigan's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v) for those sources and units, except to the extent the Administrator's approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in Indian country within the borders of the State will not be eliminated by the promulgation of an approval by the Administrator of a revision to Michigan's SIP.

(4) Notwithstanding the provisions of paragraphs (e)(2) and (3) of this section, the provisions of §§ 97.526(c), 97.826(c), and 97.811(d) of this chapter shall apply with respect to each source or other entity located in the State and all CSAPR NO_X Ozone Season Group 1 allowances or CSAPR NO_X Ozone Season Group 2 allowances at any time allocated to or held by any such source or other entity. Further, if, at the time of the approval of Michigan's SIP revision described in paragraph (e)(2) or (3) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances or CSAPR NO_X Ozone Season Group 3 allowances under subpart EEEEE or GGGGG, respectively, of part 97 of this chapter to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

Subpart FF—New Jersey

■ 10. Amend § 52.1584 by revising paragraphs (e)(2) and (3) and adding paragraph (e)(4) to read as follows:

§ 52.1584 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(e) * * *

(2) The owner and operator of each source and each unit located in the State of New Jersey and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017, 2018, 2019, and 2020. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to New Jersey's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iv), except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(3) The owner and operator of each source and each unit located in the State of New Jersey and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to New Jersey's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v), except to the extent the Administrator's approval is partial or conditional.

(4) Notwithstanding the provisions of paragraphs (e)(2) and (3) of this section the provisions of §§ 97.526(c), 97.826(c), and 97.811(d) of this chapter shall apply with respect to each source or other entity located in the State and all

CSAPR NO_X Ozone Season Group 1 allowances or CSAPR NO_X Ozone Season Group 2 allowances at any time allocated to or held by any such source or other entity. Further, if, at the time of the approval of New Jersey's SIP revision described in paragraph (e)(2) or (3) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances or CSAPR NO_X Ozone Season Group 3 allowances under subpart EEEEE or GGGGG, respectively, of part 97 of this chapter to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

Subpart HH—New York

■ 11. Amend § 52.1684 by revising paragraphs (b)(2) and (3) and adding paragraph (b)(4) to read as follows:

§ 52.1684 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) * * *

(2) The owner and operator of each source and each unit located in the State of New York and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017, 2018, 2019, and 2020. The obligation to comply with such requirements with regard to sources and units in the State will be eliminated by the promulgation of an approval by the Administrator of a revision to New York's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iv) for those sources and units, except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision. The obligation to comply with such requirements with regard to sources and units located in Indian country within the borders of the State will not be eliminated by the promulgation of an approval by the Administrator of a revision to New York's SIP.

(3) The owner and operator of each source and each unit located in the State of New York and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State will be eliminated by the promulgation of an approval by the Administrator of a revision to New York's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v) for those sources and units, except to the extent the Administrator's approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in Indian country within the borders of the State will not be eliminated by the promulgation of an approval by the Administrator of a revision to New York's SIP.

(4) Notwithstanding the provisions of paragraphs (b)(2) and (3) of this section, the provisions of §§ 97.526(c), 97.826(c), and 97.811(d) of this chapter shall apply with respect to each source or other entity located in the State and all CSAPR NO_X Ozone Season Group 1 allowances or CSAPR NO_X Ozone Season Group 2 allowances at any time allocated to or held by any such source or other entity. Further, if, at the time of the approval of New York's SIP revision described in paragraph (b)(2) or (3) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances or CSAPR NO_X Ozone Season Group 3 allowances under subpart EEEEE or GGGGG, respectively, of part 97 of this chapter to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

Subpart KK—Ohio

■ 12. Amend § 52.1882 by revising paragraphs (b)(2) and (3) and adding paragraph (b)(4) to read as follows:

§ 52.1882 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) * * *

(2) The owner and operator of each source and each unit located in the State of Ohio and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017, 2018, 2019, and 2020. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Ohio's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iv), except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(3) The owner and operator of each source and each unit located in the State of Ohio and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Ohio's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v), except to the extent the Administrator's approval is partial or conditional.

(4) Notwithstanding the provisions of paragraphs (b)(2) and (3) of this section, the provisions of §§ 97.526(c), 97.826(c), and 97.811(d) of this chapter shall apply with respect to each source or other entity located in the State and all CSAPR NO_X Ozone Season Group 1 allowances or CSAPR NO_X Ozone

Season Group 2 allowances at any time allocated to or held by any such source or other entity. Further, if, at the time of the approval of Ohio's SIP revision described in paragraph (b)(2) or (3) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances or CSAPR NO_X Ozone Season Group 3 allowances under subpart EEEEE or GGGGG, respectively, of part 97 of this chapter to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

Subpart NN—Pennsylvania

■ 13. Amend § 52.2040 by revising paragraphs (b)(2) and (3) and adding paragraph (b)(4) to read as follows:

§ 52.2040 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) * * *

(2) The owner and operator of each source and each unit located in the State of Pennsylvania and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017, 2018, 2019, and 2020. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Pennsylvania's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iv), except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(3) The owner and operator of each source and each unit located in the State of Pennsylvania and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Pennsylvania's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v), except to the extent the Administrator's approval is partial or conditional.

(4) Notwithstanding the provisions of paragraphs (b)(2) and (3) of this section, the provisions of §§ 97.526(c), 97.826(c), and 97.811(d) of this chapter shall apply with respect to each source or other entity located in the State and all CSAPR NO_X Ozone Season Group 1 allowances or CSAPR NO_X Ozone Season Group 2 allowances at any time allocated to or held by any such source or other entity. Further, if, at the time of the approval of Pennsylvania's SIP revision described in paragraph (b)(2) or (3) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances or CSAPR NO_X Ozone Season Group 3 allowances under subpart EEEEE or GGGGG, respectively, of part 97 of this chapter to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

Subpart VV—Virginia

■ 14. Amend § 52.2440 by revising paragraphs (b)(2) and (3) and adding paragraph (b)(4) to read as follows:

§ 52.2440 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) * * *

(2) The owner and operator of each source and each unit located in the State of Virginia and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017, 2018, 2019, and 2020. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Virginia's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iv), except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(3) The owner and operator of each source and each unit located in the State of Virginia and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Virginia's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v), except to the extent the Administrator's approval is partial or conditional.

(4) Notwithstanding the provisions of paragraphs (b)(2) and (3) of this section, the provisions of §§ 97.526(c), 97.826(c), and 97.811(d) of this chapter shall apply with respect to each source or other entity located in the State and all CSAPR NO_X Ozone Season Group 1 allowances or CSAPR NO_X Ozone Season Group 2 allowances at any time allocated to or held by any such source or other entity. Further, if, at the time of the approval of Virginia's SIP revision described in paragraph (b)(2) or (3) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances or CSAPR NO_X Ozone Season Group 3 allowances under subpart EEEEE or GGGGG, respectively, of part 97 of this chapter to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

Subpart XX—West Virginia

■ 15. Amend § 52.2540 by revising paragraphs (b)(2) and (3) and adding paragraph (b)(4) to read as follows:

§ 52.2540 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) * * *

(2) The owner and operator of each source and each unit located in the State of West Virginia and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017, 2018, 2019, and 2020. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to West Virginia's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iv), except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(3) The owner and operator of each source and each unit located in the State of West Virginia and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to West Virginia's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v), except to the extent the Administrator's approval is partial or conditional.

(4) Notwithstanding the provisions of paragraphs (b)(2) and (3) of this section, the provisions of §§ 97.526(c), 97.826(c), and 97.811(d) of this chapter shall apply with respect to each source or other entity located in the State and all CSAPR NO_X Ozone Season Group 1 allowances or CSAPR NO_X Ozone Season Group 2 allowances at any time allocated to or held by any such source or other entity. Further, if, at the time of the approval of West Virginia's SIP revision described in paragraph (b)(2) or (3) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances or CSAPR NO_X Ozone Season Group 3 allowances under subpart EEEEE or GGGGG, respectively, of part 97 of this chapter to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

PART 78—APPEAL PROCEDURES

■ 16. The authority citation for part 78 is revised to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 17. Amend § 78.1 by:

■ a. In paragraphs (a)(1)(i)(A) and (B), removing the period at the end of the paragraph and adding in its place a semicolon;

■ b. Revising paragraphs (a)(1)(i)(C) and (D);

■ c. Removing paragraph (a)(1)(i)(E) and redesignating paragraph (a)(1)(i)(F) as paragraph (a)(1)(i)(E);

■ d. Revising paragraph (a)(1)(iv);

■ e. In paragraph (b)(1) introductory text, removing the semicolon at the end of the paragraph and adding in its place a comma;

■ f. In paragraph (b)(9)(i), removing ''(c)(2) of'' and adding in its place ''(c)(2) of'';

■ g. In paragraph (b)(13)(i), removing ''and (b)'' and adding in its place ''or (c) or § 97.412'';

■ h. In paragraph (b)(13)(iii), removing ''§§ 97.424 and 97.425'' and adding in its place ''§ 97.424 or § 97.425'';

■ i. In paragraph (b)(14)(i), removing ''and (b)'' and adding in its place ''or (c) or § 97.512'';

■ j. In paragraph (b)(14)(iii), removing ''§§ 97.524 and 97.525'' and adding in its place ''§ 97.524 or § 97.525'';

■ k. In paragraph (b)(14)(viii), adding ''or CSAPR NO_X Ozone Season Group 3 allowances'' after ''CSAPR NO_X Ozone Season Group 2 allowances'';

■ l. In paragraph (b)(15)(i), removing ''and (b)'' and adding in its place ''or (c) or § 97.612'';

■ m. In paragraph (b)(15)(iii), removing ''§§ 97.624 and 97.625'' and adding in its place ''§ 97.624 or § 97.625'';

■ n. In paragraph (b)(16)(i), removing ''and (b)'' and adding in its place ''or (c) or § 97.712'';

■ o. In paragraph (b)(16)(iii), removing ''§§ 97.724 and 97.725'' and adding in its place ''§ 97.724 or § 97.725'';

■ p. In paragraph (b)(17)(i), removing ''and (b)'' and adding in its place ''or (c) or § 97.812'';

■ q. In paragraph (b)(17)(iii), removing ''§§ 97.824 and 97.825'' and adding in its place ''§ 97.824 or § 97.825'';

■ r. Adding paragraphs (b)(17)(viii) and (ix);

■ s. Redesignating paragraph (b)(18) as paragraph (b)(20) and adding new paragraphs (b)(18) and (19);

■ t. In newly redesignated paragraph (b)(20)(i), removing ''The determination of eligibility for'' and adding in its place ''The decision on eligibility for a''; and

■ u. In newly redesignated paragraph (b)(20)(iii), removing ''and § 98.448(d)'' and adding in its place ''or (d)''.

The revisions and additions read as follows:

§ 78.1 Purpose and scope.

(a) * * *

(1) * * *

(i) * * *

(C) Subparts AA through II, AAA through III, or AAAA through IIII of part 96 of this chapter; subparts AA through II, AAA through III, or AAAA through IIII of part 97 of this chapter; or State regulations approved under § 51.123(o)(1) or (2) or (aa)(1) or (2) or § 51.124(o)(1) or (2) of this chapter;

(D) Subpart AAAAA, BBBBB, CCCCC, DDDDD, EEEEE, FFFFF, or GGGGG of part 97 of this chapter or State regulations approved under § 52.38(a)(4) or (5) or (b)(4), (5), (6), (8), (9), (10), (12), or (13) or § 52.39(e), (f), (h), or (i) of this chapter; or

* * * * *

(iv) All references in paragraph (b) of this section and in § 78.3 to subpart AAAAA of part 97 of this chapter, subpart BBBBB of part 97 of this chapter, subpart CCCCC of part 97 of this chapter, subpart DDDDD of part 97 of this chapter, subpart EEEEE of part 97 of this chapter, and subpart GGGGG of part 97 of this chapter shall be read to include the comparable provisions in State regulations approved under § 52.38(a)(4) or (5) of this chapter, § 52.38(b)(4) or (5) of this chapter, § 52.39(e) or (f) of this chapter, § 52.39(h) or (i) of this chapter, § 52.38(b)(6), (8), or (9) of this chapter, and § 52.38(b)(10), (12), or (13) of this chapter, respectively.

* * * * *

(b) * * *

(17) * * *

(viii) The decision on the removal of CSAPR NO_X Ozone Season Group 2 allowances from an Allowance Management System account and the allocation to such account or another account of CSAPR NO_X Ozone Season Group 3 allowances under § 97.826(c) of this chapter.

(ix) The decision on the recall of allocations of CSAPR NO_X Ozone Season Group 2 allowances and the removal of such allowances from an Allowance Management System account under § 97.811(d) of this chapter.

(18) Under subpart FFFFF of part 97 of this chapter,

(i) The decision on the allocation of Texas SO_2 Trading Program allowances under § 97.911(a)(2) or (c) or § 97.912 of this chapter.

(ii) The decision on the transfer of Texas SO_2 Trading Program allowances under § 97.923 of this chapter.

(iii) The decision on the deduction of Texas SO_2 Trading Program allowances under § 97.924 or § 97.925 of this chapter.

(iv) The correction of an error in an Allowance Management System account under § 97.927 of this chapter.

(v) The adjustment of information in a submission and the decision on the deduction and transfer of Texas SO_2 Trading Program allowances based on the information as adjusted under § 97.928 of this chapter.

(vi) The finalization of control period emissions data, including retroactive adjustment based on audit.

(vii) The approval or disapproval of a petition under § 97.935 of this chapter.

(19) Under subpart GGGGG of part 97 of this chapter,

(i) The decision on the allocation of CSAPR NO_X Ozone Season Group 3 allowances under § 97.1011(a)(2) or (3) or (c) or § 97.1012 of this chapter.

(ii) The decision on the transfer of CSAPR NO_X Ozone Season Group 3 allowances under § 97.1023 of this chapter.

(iii) The decision on the deduction of CSAPR NO_X Ozone Season Group 3 allowances under § 97.1024 or § 97.1025 of this chapter.

(iv) The correction of an error in an Allowance Management System account under § 97.1027 of this chapter.

(v) The adjustment of information in a submission and the decision on the deduction and transfer of CSAPR NO_X Ozone Season Group 3 allowances based on the information as adjusted under § 97.1028 of this chapter.

(vi) The finalization of control period emissions data, including retroactive adjustment based on audit.

(vii) The approval or disapproval of a petition under § 97.1035 of this chapter.

* * * * *

■ 18. Amend § 78.2 by:

■ a. Revising paragraph (a)(1);

■ b. In paragraphs (a)(2)(ii) and (iii), removing ''Who submitted'' and adding in its place ''Any person who submitted''; and

■ c. In paragraph (b), removing ''subpart'' and adding in its place ''part''.

The revision reads as follows:

§ 78.2 General.

(a) * * *

(1) The terms used in this part with regard to a decision of the Administrator that is appealed under this part shall have the meanings as set forth in the regulations under which the Administrator made such decision and as set forth in paragraph (a)(2) of this section and § 72.2 of this chapter.

* * * * *

■ 19. Amend § 78.3 by:

■ a. In paragraph (a)(1) introductory text, adding ''73,'' after ''72,'';

■ b. Revising paragraph (a)(1)(i);

■ c. Removing paragraphs (a)(1)(ii) and (a)(2) and (5) through (9) and redesignating paragraphs (a)(1)(iii) and (a)(3), (4), (10), and (11) as paragraphs (a)(1)(ii) and (a)(2), (3), (4), and (5), respectively;

■ d. In newly redesignated paragraph (a)(2)(i), removing ''the unit'' and adding in its place ''a unit or source covered by the decision'';

■ e. In newly redesignated paragraph (a)(3) introductory text, removing ''AA through II of part 96'' and adding in its place ''AA through II, AAA through III, or AAAA through IIII of part 96 of this chapter or AA through II, AAA through III, or AAAA through IIII of part 97'';

■ f. Revising newly redesignated paragraph (a)(3)(i);

■ g. In newly redesignated paragraph (a)(4) introductory text, removing ''or EEEEE'' and adding in its place ''EEEEE, FFFFF, or GGGGG'';

■ h. Revising newly redesignated paragraphs (a)(4)(i) and (a)(5)(i);

■ i. In paragraph (b)(3)(i)(A), removing ''(a)(1), (2), (10), or (11) of this section.'' and adding in its place ''(a)(1) of this section;'';

■ j. In paragraph (b)(3)(i)(B), removing ''(a)(3) of this section.'' and adding in its place ''(a)(2) of this section;'';

■ k. In paragraph (b)(3)(i)(C), removing ''(a)(4), (5), (6), (7), (8), or (9) of this section.'' and adding in its place ''(a)(3) of this section;'';

■ l. Adding paragraphs (b)(3)(i)(D) and (E);

■ m. In paragraph (c)(5)(ii), removing the period at the end of the paragraph and adding in its place a semicolon;

■ n. Revising paragraphs (c)(7)(i) through (v);

■ o. In paragraph (d)(1), removing the period at the end of the paragraph and adding in its place a semicolon;

■ p. In paragraph (d)(2)(i), removing ''the Acid Rain Program or subpart AAAAA, BBBBB, CCCCC, DDDDD, or EEEEE of part 97 of this chapter.'' and adding in its place ''parts 72, 73, 74, 75, 76, and 77 of this chapter;'';

■ q. In paragraph (d)(2)(ii), removing ''the NO_X Budget Trading Program.'' and adding in its place ''subparts A through J of part 97 of this chapter;'';

■ r. In paragraph (d)(2)(iii), removing the period at the end of the paragraph and adding in its place a semicolon;

■ s. Adding paragraphs (d)(2)(iv) and (v);

■ t. In paragraphs (d)(3) and (4), removing the period at the end of the paragraph and adding in its place a semicolon;

■ u. Revising paragraphs (d)(5) and (6); and

■ v. Removing paragraph (d)(7) and redesignating paragraph (d)(8) as paragraph (d)(7).

The revisions and additions read as follows:

§ 78.3 Petition for administrative review and request for evidentiary hearing.

(a) * * *

(1) * * *

(i) The designated representative for a unit or source covered by the decision or the authorized account representative for any Allowance Tracking System account covered by the decision; or

* * * * *

(3) * * *

(i) The CAIR designated representative for a unit or source covered by the decision or the CAIR authorized account representative for any CAIR NO_X Allowance Tracking System account, CAIR SO_2 Allowance Tracking System account, or CAIR NO_X Ozone Season Allowance Tracking System account covered by the decision; or

* * * * *

(4) * * *

(i) The designated representative for a unit or source covered by the decision or the authorized account representative for any Allowance Management System account covered by the decision; or

* * * * *

(5) * * *

(i) The designated representative for a facility covered by the decision; or

* * * * *

(b) * * *

(3) * * *

(i) * * *

(D) The designated representative or authorized account representative, for a petition under paragraph (a)(4) of this section; or

(E) The designated representative, for a petition under paragraph (a)(5) of this section; and

* * * * *

(c) * * *

(7) * * *

(i) Parts 72, 73, 74, 75, 76, and 77 of this chapter;

(ii) Subparts A through J of part 97 of this chapter;

(iii) Subparts AA through II, AAA through III, or AAAA through IIII of part 96 of this chapter or subparts AA through II, AAA through III, or AAAA through IIII of part 97 of this chapter;

(iv) Subpart AAAAA, BBBBB, CCCCC, DDDDD, EEEEE, FFFFF, or GGGGG of part 97 of this chapter; or

(v) Subpart RR of part 98 of this chapter.

(d) * * *

(2) * * *

(iv) A certificate of representation submitted by a designated representative or an application for a general account submitted by an authorized account representative under subpart AAAAA, BBBBB, CCCCC, DDDDD, EEEEE, FFFFF, or GGGGG of part 97 of this chapter; or

(v) A certificate of representation submitted by a designated representative under part 98 of this chapter;

* * * * *

(5) Any provision or requirement of subparts AA through II, AAA through III, or AAAA through IIII of part 96 of this chapter or subparts AA through II, AAA through III, or AAAA through IIII of part 97 of this chapter, including the standard requirements under § 96.106, § 96.206, or § 96.306 of this chapter or § 97.106, § 97.206, or § 97.306 of this chapter, respectively, and any emission monitoring or reporting requirements;

(6) Any provision or requirement of subpart AAAAA, BBBBB, CCCCC, DDDDD, EEEEE, FFFFF, or GGGGG of part 97 of this chapter, including the standard requirements under § 97.406, § 97.506, § 97.606, § 97.706, § 97.806, § 97.906, or § 97.1006 of this chapter, respectively, and any emission monitoring or reporting requirements; or

* * * * *

■ 20. Amend § 78.4 by:

■ a. Revising paragraph (a)(1)(i);

■ b. In paragraph (a)(1)(ii), designating the first sentence as paragraph (a)(1)(ii)(A) and designating the second sentence as paragraph (a)(1)(ii)(B);

■ c. In paragraph (a)(1)(iii), designating the first sentence as paragraph (a)(1)(iii)(A) and designating the second sentence as paragraph (a)(1)(iii)(B); and

■ d. Redesignating paragraph (a)(1)(iv) as paragraph (a)(1)(v) and adding a new paragraph (a)(1)(iv).

The revision and addition read as follows:

§ 78.4 Filings.

(a) * * *

(1) * * *

(i)(A) Any filings on behalf of owners and operators of an affected unit or affected source under parts 72, 73, 74, 75, 76, and 77 of this chapter shall be signed by the designated representative.

(B) Any filings on behalf of persons with an ownership interest with respect to allowances in a general account under parts 72, 73, 74, 75, 76, and 77 of this chapter shall be signed by the authorized account representative.

* * * * *

(iv)(A) Any filings on behalf of owners and operators of a CSAPR NO_X Annual unit or CSAPR NO_X Annual source, CSAPR NO_X Ozone Season Group 1 unit or CSAPR NO_X Ozone Season Group 1 source, CSAPR NO_X Ozone Season Group 2 unit or CSAPR NO_X Ozone Season Group 2 source, CSAPR NO_X Ozone Season Group 3 unit or CSAPR NO_X Ozone Season Group 3 source, CSAPR SO_2 Group 1 unit or CSAPR SO_2 Group 1 source, CSAPR SO_2 Group 2 unit or CSAPR SO_2 Group 2 source, or Texas SO_2 Trading Program unit or Texas SO_2 Trading Program source shall be signed by the designated representative.

(B) Any filings on behalf of persons with an ownership interest with respect to CSAPR NO_X Annual allowances, CSAPR NO_X Ozone Season Group 1 allowances, CSAPR NO_X Ozone Season Group 2 allowances, CSAPR NO_X Ozone Season Group 3 allowances, CSAPR SO_2 Group 1 allowances, CSAPR SO_2 Group 2 allowances, or Texas SO_2 Trading Program allowances in a general account shall be signed by the authorized account representative.

* * * * *

§ 78.5 [Amended]

■ 21. In § 78.5, amend paragraph (a) by removing from the second sentence ''presented, the issue could not'' and adding in its place ''presented or the issue could not''.

§ 78.6 [Amended]

■ 22. Amend § 78.6 by:

■ a. In paragraph (a), removing ''of this part'';

■ b. In paragraph (b)(2) introductory text, removing ''in part, it will:'' and adding in its place ''in part:'';

■ c. In paragraph (b)(2)(i), removing ''Identify the portions'' and adding in its place ''It will identify the portions'', and removing the comma after ''contested''; and

■ d. In paragraph (b)(2)(ii), removing ''Refer the disputed'' and adding in its place ''It will refer the disputed''.

§ 78.10 [Amended]

■ 23. Amend § 78.10 by:

■ a. In paragraph (a)(3), removing ''this paragraph'' and adding in its place ''paragraph (a)(1) or (2) of this section'';

■ b. In paragraph (b), adding a comma after ''knowingly caused to be made''; and

■ c. In paragraph (c), removing ''under § 78.9 of this part. This prohibition terminates'' and adding in its place ''under § 78.9. These prohibitions terminate''.

§ 78.11 [Amended]

■ 24. Amend § 78.11 by:

■ a. In paragraph (a), removing ''of this part'' wherever it appears; and

■ b. In paragraph (b) introductory text, removing ''of'' and adding in its place ''or''.

§ 78.12 [Amended]

■ 25. Amend § 78.12 by:

■ a. In paragraph (a)(1), removing ''warrants review.'' and adding in its place ''warrants review; and''; and

■ b. In paragraph (a)(2), adding a comma after ''Acid Rain permit''.

§ 78.13 [Amended]

■ 26. In § 78.13, amend paragraph (a)(3) by removing ''of this part''.

§ 78.14 [Amended]

■ 27. In § 78.14, amend paragraphs (a)(4) and (7) and (c)(4) by removing ''of this part''.

§ 78.15 [Amended]

■ 28. Amend § 78.15 by:

■ a. In paragraph (a), removing ''of this part'' wherever it appears; and

■ b. In paragraph (e), removing ''of this part''.

§ 78.16 [Amended]

■ 29. In § 78.16, amend paragraph (b) introductory text by removing the period at the end of the second sentence and adding in its place a colon.

§ 78.17 [Amended]

■ 30. Amend § 78.17 by removing ''of this part''.

§ 78.18 [Amended]

■ 31. In § 78.18, amend paragraphs (a) and (b)(1) and (2) by removing ''of this part''.

§ 78.19 [Amended]

■ 32. Amend § 78.19 by:

■ a. In paragraph (d), adding ''the'' in the second sentence before ''Environmental Appeals Board''; and
■ b. In paragraph (e), removing ''of this part''.

§ 78.20 [Amended]

■ 33. Amend § 78.20 by:
■ a. In paragraph (a)(2), removing ''§ 78.12(a) (1) and (2) of this part.'' and adding in its place ''§ 78.12(a)(1) and (2).''; and
■ b. In paragraph (c), removing ''of this part''.

PART 97—FEDERAL NO_X BUDGET TRADING PROGRAM, CAIR NO_X AND SO_2 TRADING PROGRAMS, CSAPR NO_X AND SO_2 TRADING PROGRAMS, AND TEXAS SO_2 TRADING PROGRAM

■ 34. The authority citation for part 97 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7426, 7491, 7601, and 7651, *et seq.*

Subpart AAAAA—CSAPR NO_X Annual Trading Program

■ 35. Amend § 97.402 by:
■ a. Revising the definition of ''allowance transfer deadline'';
■ b. In the definition of ''alternate designated representative'', adding ''CSAPR NO_X Ozone Season Group 3 Trading Program,'' before ''CSAPR SO_2 Group 1 Trading Program,'';
■ c. In the definition of ''common designated representative'', removing ''such control period, the same'' and adding in its place ''such a control period before 2023, or as of July 1 immediately after such deadline for such a control period in 2023 or thereafter, the same'';
■ d. Revising the definitions of ''common designated representative's assurance level'' and ''common designated representative's share'';
■ e. In the definition of ''CSAPR NO_X Ozone Season Group 1 Trading Program'', removing ''(b)(3) through (5), and (b)(10) through (12)'' and adding in its place ''and (b)(3) through (5) and (14) through (16)'';
■ f. In the definition of ''CSAPR NO_X Ozone Season Group 2 Trading Program'', removing ''(b)(2)(i) and (iii), (b)(6) through (11), and (b)(13)'' and adding in its place ''(b)(2)(iii) and (iv), and (b)(6) through (9), (14), (15), and (17)'';
■ g. Adding in alphabetical order a definition for ''CSAPR NO_X Ozone Season Group 3 Trading Program'';
■ h. In the definition of ''designated representative'', adding ''CSAPR NO_X Ozone Season Group 3 Trading Program,'' before ''CSAPR SO_2 Group 1 Trading Program,'';
■ i. In the definition of ''fossil fuel'', paragraph (2), removing ''§ 97.404(b)(2)(i)(B) and (ii)'' and adding in its place ''§ 97.404(b)(2)(i)(B) and (b)(2)(ii)''; and
■ j. Adding in alphabetical order a definition for ''nitrogen oxides''.

The revisions and additions read as follows:

§ 97.402 Definitions.

* * * * *

Allowance transfer deadline means, for a control period before 2023, midnight of March 1 immediately after such control period or, for a control period in 2023 or thereafter, midnight of June 1 immediately after such control period (or if such March 1 or June 1 is not a business day, midnight of the first business day thereafter) and is the deadline by which a CSAPR NO_X Annual allowance transfer must be submitted for recordation in a CSAPR NO_X Annual source's compliance account in order to be available for use in complying with the source's CSAPR NO_X Annual emissions limitation for such control period in accordance with §§ 97.406 and 97.424.

* * * * *

Common designated representative's assurance level means, with regard to a specific common designated representative and a State (and Indian country within the borders of such State) and control period in a given year for which the State assurance level is exceeded as described in § 97.406(c)(2)(iii):

(1) The amount (rounded to the nearest allowance) equal to the sum of the total amount of CSAPR NO_X Annual allowances allocated for such control period to a group of one or more CSAPR NO_X Annual units located in the State (and Indian country within the borders of such State) and having the common designated representative for such control period and the total amount of CSAPR NO_X Annual allowances purchased by an owner or operator of such CSAPR NO_X Annual units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance accounts for such CSAPR NO_X Annual units in accordance with the CSAPR NO_X Annual allowance auction provisions in a SIP revision approved by the Administrator under § 52.38(a)(4) or (5) of this chapter, multiplied by the sum of the State NO_X Annual trading budget under § 97.410(a) and the State's variability limit under § 97.410(b) for such control period and divided by such State NO_X Annual trading budget;

(2) Provided that, for a control period in a year before 2023 only, in the case of a unit that operates during, but has no amount of CSAPR NO_X Annual allowances allocated under §§ 97.411 and 97.412 for, such control period, the unit shall be treated, solely for purposes of this definition, as being allocated an amount (rounded to the nearest allowance) of CSAPR NO_X Annual allowances for such control period equal to the unit's allowable NO_X emission rate applicable to such control period, multiplied by a capacity factor of 0.85 (if the unit is a boiler combusting any amount of coal or coal-derived fuel during such control period), 0.24 (if the unit is a simple cycle combustion turbine during such control period), 0.67 (if the unit is a combined cycle combustion turbine during such control period), 0.74 (if the unit is an integrated coal gasification combined cycle unit during such control period), or 0.36 (for any other unit), multiplied by the unit's maximum hourly load as reported in accordance with this subpart and by 8,760 hours/control period, and divided by 2,000 lb/ton.

Common designated representative's share means, with regard to a specific common designated representative for a control period in a given year and a total amount of NO_X emissions from all CSAPR NO_X Annual units in a State (and Indian country within the borders of such State) during such control period, the total tonnage of NO_X emissions during such control period from the group of one or more CSAPR NO_X Annual units located in such State (and such Indian country) and having the common designated representative for such control period.

* * * * *

CSAPR NO_X Ozone Season Group 3 Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with subpart GGGGG of this part and § 52.38(b)(1), (b)(2)(v), and (b)(10) through (15) and (18) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(11) or (12) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(10) or (13) of this chapter), as a means of mitigating interstate transport of ozone and NO_X.

* * * * *

Nitrogen oxides means all oxides of nitrogen except nitrous oxide (N_2O), reported on an equivalent molecular weight basis as nitrogen dioxide (NO_2).

* * * * *

§ 97.404 [Amended]

■ 36. In § 97.404, amend paragraph (b) introductory text by removing ''or (2)(i)'' and adding in its place ''or (b)(2)(i)''.

§ 97.405 [Amended]

■ 37. In § 97.405, amend paragraph (b) by removing the subject heading.

§ 97.406 [Amended]

■ 38. In § 97.406, amend paragraph (c)(4)(ii) by removing ''and (2)(i)'' and adding in its place ''and (c)(2)(i)''.

§ 97.410 [Amended]

■ 39. Amend § 97.410 by:
■ a. In paragraph (a)(1)(v), removing ''1,439'' and adding in its place ''1,441'';
■ b. In paragraph (a)(2)(v), removing ''1,075'' and adding in its place ''1,074'';
■ c. In paragraph (a)(3)(v), removing ''3,830'' and adding in its place ''3,831'';
■ d. In paragraph (a)(4)(v), removing ''3,253'' and adding in its place ''3,256'';
■ e. In paragraph (a)(5)(v), removing ''712'' and adding in its place ''715'';
■ f. In paragraph (a)(8)(v), removing ''331'' and adding in its place ''333'';
■ g. In paragraph (a)(9)(v), removing ''1,198'' and adding in its place ''1,201'';
■ h. In paragraph (a)(10)(v), removing ''561'' and adding in its place ''565'';
■ i. In paragraph (a)(11)(v), removing ''2,925'' and adding in its place ''2,929'';
■ j. In paragraph (a)(12)(v), removing ''1,772'' and adding in its place ''1,771'';
■ k. In paragraph (a)(13)(v), removing ''159'' and adding in its place ''155'';
■ l. In paragraph (a)(14)(v), removing ''412'' and adding in its place ''410'';
■ m. In paragraph (a)(17)(v), removing ''2,384'' and adding in its place ''2,383'';
■ n. In paragraph (a)(18)(v), removing ''617'' and adding in its place ''620'';
■ o. In paragraph (a)(19)(v), removing ''387'' and adding in its place ''381'';
■ p. In paragraph (a)(21)(v), removing ''1,662'' and adding in its place ''1,663''; and
■ q. In paragraph (a)(22)(v), removing ''2,729'' and adding in its place ''2,730''.
■ 40. Amend § 97.411 by:
■ a. Redesignating paragraph (b)(1)(i) as paragraph (b)(1)(i)(A), removing ''By June 1, 2015 and June 1 of each year thereafter,'' and adding in its place ''By June 1 of each year from 2015 through 2022,'';
■ b. Adding paragraph (b)(1)(i)(B);
■ c. In paragraph (b)(1)(ii)(A), removing ''through (7) and (12) and'' and adding in its place ''through (7) and (12) for a control period before 2023, or § 97.412(a)(2) through (7), (10), and (12) for a control period in 2023 or thereafter, and'';
■ d. Revising paragraph (b)(1)(ii)(B);
■ e. In paragraph (b)(1)(iii), removing ''such control period'' and adding in its place ''a control period before 2023'';
■ f. In paragraph (b)(1)(v), removing ''of this section,'' and adding in its place ''of this section for a control period before 2023, or in paragraph (b)(1)(ii) of this section for a control period in 2023 or thereafter,'';
■ g. Redesignating paragraph (b)(2)(i) as paragraph (b)(2)(i)(A), removing ''By June 1, 2015 and June 1 of each year thereafter,'' and adding in its place ''By June 1 of each year from 2015 through 2022,'';
■ h. Adding paragraph (b)(2)(i)(B);
■ i. In paragraph (b)(2)(ii)(A), removing ''through (7) and (12) and'' and adding in its place ''through (7) and (12) for a control period before 2023, or § 97.412(b)(2) through (7), (10), and (12) for a control period in 2023 or thereafter, and'';
■ j. Revising paragraph (b)(2)(ii)(B);
■ k. In paragraph (b)(2)(iii), removing ''such control period'' and adding in its place ''a control period before 2023'';
■ l. In paragraph (b)(2)(v), removing ''of this section,'' and adding in its place ''of this section for a control period before 2023, or in paragraph (b)(2)(ii) of this section for a control period in 2023 or thereafter,'';
■ m. In paragraph (c)(5)(i)(A), adding ''(or a subsequent control period)'' before ''for the State'';
■ n. In paragraph (c)(5)(i)(B), adding ''(or a subsequent control period)'' before ''in accordance with such SIP revision'';
■ o. In paragraph (c)(5)(ii)(A), adding ''(or a subsequent control period)'' before the semicolon at the end of the paragraph;
■ p. In paragraph (c)(5)(ii)(B), adding ''(or a subsequent control period)'' before ''in accordance with such SIP revision''; and
■ q. In paragraph (c)(5)(iii), adding ''(or a subsequent control period)'' before the period at the end of the paragraph.

The additions and revisions read as follows:

§ 97.411 Timing requirements for CSAPR NO_X Annual allowance allocations.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) By March 1, 2024 and March 1 of each year thereafter, the Administrator will calculate the CSAPR NO_X Annual allowance allocation to each CSAPR NO_X Annual unit in a State, in accordance with § 97.412(a)(2) through (7), (10), and (12), for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) * * *

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the applicable provisions referenced in paragraph (b)(1)(ii)(A) of this section. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(A) of this section for a control period before 2023, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(B) of this section for a control period in 2023 or thereafter, the Administrator will promulgate a notice of data availability of the calculations incorporating any adjustments that the Administrator determines to be necessary with regard to allocations under such applicable provisions and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(ii)(A) of this section.

* * * * *

(2) * * *

(i) * * *

(B) By March 1, 2024 and March 1 of each year thereafter, the Administrator will calculate the CSAPR NO_X Annual allowance allocation to each CSAPR NO_X Annual unit in Indian country within the borders of a State, in accordance with § 97.412(b)(2) through (7), (10), and (12), for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) * * *

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the applicable provisions referenced in paragraph (b)(2)(ii)(A) of this section. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(A) of this section for a control period before 2023, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(B) of this section for a control period in 2023 or thereafter, the Administrator will promulgate a notice of data availability of the calculations incorporating any adjustments that the Administrator determines to be necessary with regard to allocations under such applicable provisions and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(ii)(A) of this section.

* * * * *

■ 41. Amend § 97.412 by:

■ a. Adding a subject heading to paragraph (a) introductory text;
■ b. In paragraph (a)(1)(i), removing ''§ 97.411(a)(1);'' and adding in its place ''§ 97.411(a)(1) and that have deadlines for certification of monitoring systems under § 97.430(b) not later than December 31 of the year of the control period;'';
■ c. In paragraph (a)(1)(iii), removing ''control period; or'' and adding in its place ''control period, for a control period before 2023, or that operate during such control period, for a control period in 2023 or thereafter; or'';
■ d. In paragraph (a)(3) introductory text, removing ''later'' and adding in its place ''latest'';
■ e. Revising paragraphs (a)(3)(ii) and (iv);
■ f. In paragraph (a)(4)(i), removing ''preceding control period.'' and adding in its place ''preceding control period, for a control period before 2023, or the unit's total tons of NO_X emissions during the control period, for a control period in 2023 or thereafter.'';
■ g. In paragraph (a)(5), adding ''allocation amounts of'' after ''sum of the'';
■ h. In paragraph (a)(8), removing ''The Administrator'' and adding in its place ''For a control period before 2023 only, the Administrator'';
■ i. In paragraph (a)(9) introductory text, removing ''If, after completion'' and adding in its place ''For a control period before 2023 only, if, after completion'';
■ j. In paragraph (a)(10), removing ''for such control period, any unallocated'' and adding in its place ''for a control period before 2023, or under paragraphs (a)(2) through (7) and (12) of this section for a control period in 2023 or thereafter, any unallocated'';
■ k. Redesignating paragraph (a)(11) as paragraph (a)(11)(i), removing ''The Administrator'' and adding in its place ''For a control period before 2023, the Administrator'';
■ l. Adding paragraph (a)(11)(ii);
■ m. Revising paragraph (a)(12);
■ n. Adding a subject heading to paragraph (b) introductory text;
■ o. In paragraph (b)(1)(i), removing ''§ 97.411(a)(1); or'' and adding in its place ''§ 97.411(a)(1) and that have deadlines for certification of monitoring systems under § 97.430(b) not later than December 31 of the year of the control period; or'';
■ p. Revising paragraph (b)(3)(ii);
■ q. In paragraph (b)(4)(i), removing ''preceding control period.'' and adding in its place ''preceding control period, for a control period before 2023, or the unit's total tons of NO_X emissions during the control period, for a control period in 2023 or thereafter.'';
■ r. In paragraph (b)(5), adding ''allocation amounts of'' after ''sum of the'';
■ s. In paragraph (b)(8), removing ''The Administrator'' and adding in its place ''For a control period before 2023 only, the Administrator'';
■ t. In paragraph (b)(9) introductory text, removing ''If, after completion'' and adding in its place ''For a control period before 2023 only, if, after completion'';
■ u. In paragraph (b)(10) introductory text, removing ''for such control period, any unallocated'' and adding in its place ''for a control period before 2023, or under paragraphs (b)(2) through (7) and (12) of this section for a control period in 2023 or thereafter, any unallocated'';
■ v. Redesignating paragraph (b)(11) as paragraph (b)(11)(i), removing ''The Administrator'' and adding in its place ''For a control period before 2023, the Administrator'';
■ w. Adding paragraph (b)(11)(ii); and
■ x. Revising paragraph (b)(12).

The additions and revisions read as follows:

§ 97.412 CSAPR NO_X Annual allowance allocations to new units.

(a) *Allocations from new unit set-asides.* * * *

* * * * *

(3) * * *

(ii) The first control period after the control period containing the deadline for certification of the CSAPR NO_X Annual unit's monitoring systems under § 97.430(b), for allocations for a control period before 2023, or the control period containing such deadline, for allocations for a control period in 2023 or thereafter;

* * * * *

(iv) For a unit described in paragraph (a)(1)(iii) of this section, the first control period after the control period in which the unit resumes operation, for allocations for a control period before 2023, or the control period in which the unit resumes operation, for allocations for a control period in 2023 or thereafter.

* * * * *

(11) * * *

(ii) For a control period in 2023 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.411(b)(1)(i), (ii), and (v), of the amount of CSAPR NO_X Annual allowances allocated under paragraphs (a)(2) through (7), (10), and (12) of this section for such control period to each CSAPR NO_X Annual unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (a)(2) through (11) of this section, if the calculations of allocations from a new unit set-aside for a control period before 2023 under paragraph (a)(7) of this section, paragraphs (a)(6) and (a)(9)(iv) of this section, or paragraphs (a)(6), (a)(9)(iii), and (a)(10) of this section, or for a control period in 2023 or thereafter under paragraph (a)(7) of this section or paragraphs (a)(6) and (10) of this section, would otherwise result in total allocations from such new unit set-aside unequal to the total amount of such new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR NO_X Annual units in descending order based on such units' allocation amounts under paragraph (a)(7), (a)(9)(iv), or (a)(10) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR NO_X Annual allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such new unit set-aside equal the total amount of such new unit set-aside.

(b) *Allocations from Indian country new unit set-asides.* * * *

* * * * *

(3) * * *

(ii) The first control period after the control period containing the deadline for certification of the CSAPR NO_X Annual unit's monitoring systems under § 97.430(b), for allocations for a control period before 2023, or the control period containing such deadline, for allocations for a control period in 2023 or thereafter.

* * * * *

(11) * * *

(ii) For a control period in 2023 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.411(b)(2)(i), (ii), and (v), of the amount of CSAPR NO_X Annual allowances allocated under paragraphs (b)(2) through (7), (10), and (12) of this section for such control period to each CSAPR NO_X Annual unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (b)(2) through (11) of this section, if the calculations of allocations from an Indian country new unit set-aside for a control period before 2023 under paragraph (b)(7) of this section or

paragraphs (b)(6) and (b)(9)(iv) of this section, or for a control period in 2023 or thereafter under paragraph (b)(7) of this section, would otherwise result in total allocations from such Indian country new unit set-aside unequal to the total amount of such Indian country new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR NO_X Annual units in descending order based on such units' allocation amounts under paragraph (b)(7) or (b)(9)(iv) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR NO_X Annual allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such Indian country new unit set-aside equal the total amount of such Indian country new unit set-aside.

§ 97.420 [Amended]

■ 42. In § 97.420, amend paragraph (c)(3)(iii)(B) by removing ''to NO_X'' and adding in its place ''to CSAPR NO_X''.

■ 43. Amend § 97.421 by:

■ a. Redesignating paragraph (f) as paragraph (f)(1), removing ''By July 1, 2019 and July 1 of each year thereafter,'' and adding in its place ''By July 1, 2019 and July 1, 2020,'';

■ b. Adding paragraph (f)(2);

■ c. Redesignating paragraph (g) as paragraph (g)(1), removing ''By August 1, 2015 and August 1 of each year thereafter,'' and adding in its place ''By August 1 of each year from 2015 through 2022,'';

■ d. Adding paragraph (g)(2);

■ e. Redesignating paragraph (h) as paragraph (h)(1), removing ''By August 1, 2015 and August 1 of each year thereafter,'' and adding in its place ''By August 1 of each year from 2015 through 2022,'';

■ f. Adding paragraph (h)(2); and

■ g. In paragraphs (i) and (j), removing ''By February 15, 2016 and February 15 of each year thereafter,'' and adding in its place ''By February 15 of each year from 2016 through 2023,''.

The additions read as follows:

§ 97.421 Recordation of CSAPR NO_X Annual allowance allocations and auction results.

* * * * *

(f) * * *

(2) By July 1, 2022 and July 1 of each year thereafter, the Administrator will record in each CSAPR NO_X Annual source's compliance account the CSAPR NO_X Annual allowances allocated to the CSAPR NO_X Annual units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Annual allowances auctioned to CSAPR NO_X Annual units, in accordance with § 97.411(a), or with a SIP revision approved under § 52.38(a)(4) or (5) of this chapter, for the control period in the third year after the year of the applicable recordation deadline under this paragraph.

(g) * * *

(2) By May 1, 2024 and May 1 of each year thereafter, the Administrator will record in each CSAPR NO_X Annual source's compliance account the CSAPR NO_X Annual allowances allocated to the CSAPR NO_X Annual units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Annual allowances auctioned to CSAPR NO_X Annual units, in accordance with § 97.412(a)(2) through (12), or with a SIP revision approved under § 52.38(a)(4) or (5) of this chapter, for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(h) * * *

(2) By May 1, 2024 and May 1 of each year thereafter, the Administrator will record in each CSAPR NO_X Annual source's compliance account the CSAPR NO_X Annual allowances allocated to the CSAPR NO_X Annual units at the source in accordance with § 97.412(b)(2) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

* * * * *

■ 44. Amend § 97.424 by adding a paragraph (c) subject heading and revising paragraph (c)(1) to read as follows:

§ 97.424 Compliance with CSAPR NO_X Annual emissions limitation.

* * * * *

(c) *Selection of CSAPR NO_X Annual allowances for deduction*—(1) *Identification by serial number.* The designated representative for a source may request that specific CSAPR NO_X Annual allowances, identified by serial number, in the source's compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the CSAPR NO_X Annual source and the appropriate serial numbers.

* * * * *

■ 45. Amend § 97.425 by:

■ a. Revising paragraphs (b)(1) introductory text and (b)(1)(ii);

■ b. In paragraph (b)(2)(i), removing ''By July 1'' and adding in its place ''For a control period before 2023 only, by July 1'';

■ c. Revising paragraphs (b)(2)(ii), (b)(2)(iii) introductory text, and (b)(2)(iii)(A);

■ d. In paragraph (b)(2)(iii)(B), removing ''such notice,'' and adding in its place ''such notice or notices,''; and

■ e. In paragraph (b)(6)(ii), removing ''If any such data'' and adding in its place ''For a control period before 2023 only, if any such data''.

The revisions read as follows:

§ 97.425 Compliance with CSAPR NO_X Annual assurance provisions.

* * * * *

(b) * * *

(1) By June 1 of each year from 2018 through 2023 and by August 1 of each year thereafter, the Administrator will:

* * * * *

(ii) If the calculations under paragraph (b)(1)(i) of this section indicate that the total NO_X emissions from all CSAPR NO_X Annual units at CSAPR NO_X Annual sources in any State (and Indian country within the borders of such State) during such control period exceed the State assurance level for such control period, promulgate a notice of data availability of the results of the calculations required in paragraph (b)(1)(i) of this section, including separate calculations of the NO_X emissions from each CSAPR NO_X Annual source.

(2) * * *

(ii) The Administrator will calculate, for each such State (and Indian country within the borders of such State) and such control period and each common designated representative for such control period for a group of one or more CSAPR NO_X Annual sources and units in the State (and Indian country within the borders of such State), the common designated representative's share of the total NO_X emissions from all CSAPR NO_X Annual units at CSAPR NO_X Annual sources in the State (and Indian country within the borders of such State), the common designated representative's assurance level, and the amount (if any) of CSAPR NO_X Annual allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in § 97.406(c)(2)(i). For a control period before 2023, if the

results of these calculations were not included in the notice of data availability required in paragraph (b)(1)(ii) of this section, the Administrator will promulgate a notice of data availability of the results of these calculations by August 1 immediately after the promulgation of such notice. For a control period in 2023 or thereafter, the Administrator will include the results of these calculations in the notice of data availability required in paragraph (b)(1)(ii) of this section.

(iii) The Administrator will provide an opportunity for submission of objections to the calculations referenced by the notice or notices of data availability required in paragraphs (b)(1)(ii) and (b)(2)(ii) of this section.

(A) Objections shall be submitted by the deadline specified in such notice or notices and shall be limited to addressing whether the calculations referenced in the notice or notices are in accordance with § 97.406(c)(2)(iii), §§ 97.406(b) and 97.430 through 97.435, the definitions of ''common designated representative'', ''common designated representative's assurance level'', and ''common designated representative's share'' in § 97.402, and the calculation formula in § 97.406(c)(2)(i).

* * * * *

§ 97.431 [Amended]

■ 46. In § 97.431, amend paragraph (d)(3) introductory text by removing in the last sentence ''with'' after ''is replaced by''.

§ 97.434 [Amended]

■ 47. In § 97.434, amend paragraph (d)(3) by adding ''CSAPR NO_X Ozone Season Group 3 Trading Program,'' before ''CSAPR SO_2 Group 1 Trading Program,''.

Subpart BBBBB—CSAPR NO_X Ozone Season Group 1 Trading Program

■ 48. Amend § 97.502 by:
■ a. Revising the definition of ''allowance transfer deadline'';
■ b. In the definition of ''common designated representative'', removing ''such control period, the same'' and adding in its place ''such a control period before 2023, or as of July 1 immediately after such deadline for such a control period in 2023 or thereafter, the same'';
■ c. Revising the definitions of ''common designated representative's assurance level'' and ''common designated representative's share'';
■ d. In the definition of ''CSAPR NO_X Ozone Season Group 1 Trading Program'', removing ''(b)(3) through (5), and (b)(10) through (12)'' and adding in its place ''and (b)(3) through (5) and (14) through (16)'''';
■ e. In the definition of ''CSAPR NO_X Ozone Season Group 2 Trading Program'', removing ''(b)(2)(i) and (iii), (b)(6) through (11), and (b)(13)'' and adding in its place ''(b)(2)(iii) and (iv), and (b)(6) through (9), (14), (15) and (17)'';
■ f. Adding in alphabetical order definitions for ''CSAPR NO_X Ozone Season Group 3 allowance'' and ''CSAPR NO_X Ozone Season Group 3 Trading Program'';
■ g. In the definition of ''fossil fuel'', paragraph (2), removing ''§ 97.504(b)(2)(i)(B) and (ii)'' and adding in its place ''§ 97.504(b)(2)(i)(B) and (b)(2)(ii)'';
■ h. Adding in alphabetical order a definition for ''nitrogen oxides''; and
■ i. In the definition of ''State'', removing ''(b)(3) through (5), and (b)(10) through (12)'' and adding in its place ''and (b)(3) through (5) and (14) through (16)''.

The revisions and additions read as follows:

§ 97.502 Definitions.

* * * * *

Allowance transfer deadline means, for a control period in 2015 or 2016, midnight of December 1 immediately after such control period or, for a control period in a year from 2017 through 2022, midnight of March 1 immediately after such control period or, for a control period in 2023 or thereafter, midnight of June 1 immediately after such control period (or if such December 1, March 1, or June 1 is not a business day, midnight of the first business day thereafter) and is the deadline by which a CSAPR NO_X Ozone Season Group 1 allowance transfer must be submitted for recordation in a CSAPR NO_X Ozone Season Group 1 source's compliance account in order to be available for use in complying with the source's CSAPR NO_X Ozone Season Group 1 emissions limitation for such control period in accordance with §§ 97.506 and 97.524.

* * * * *

Common designated representative's assurance level means, with regard to a specific common designated representative and a State (and Indian country within the borders of such State) and control period in a given year for which the State assurance level is exceeded as described in § 97.506(c)(2)(iii):

(1) The amount (rounded to the nearest allowance) equal to the sum of the total amount of CSAPR NO_X Ozone Season Group 1 allowances allocated for such control period to a group of one or more CSAPR NO_X Ozone Season Group 1 units located in the State (and Indian country within the borders of such State) and having the common designated representative for such control period and the total amount of CSAPR NO_X Ozone Season Group 1 allowances purchased by an owner or operator of such CSAPR NO_X Ozone Season Group 1 units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance accounts for such CSAPR NO_X Ozone Season Group 1 units in accordance with the CSAPR NO_X Ozone Season Group 1 allowance auction provisions in a SIP revision approved by the Administrator under § 52.38(b)(4) or (5) of this chapter, multiplied by the sum of the State NO_X Ozone Season Group 1 trading budget under § 97.510(a) and the State's variability limit under § 97.510(b) for such control period and divided by such State NO_X Ozone Season Group 1 trading budget;

(2) Provided that, for a control period before 2023 only, in the case of a unit that operates during, but has no amount of CSAPR NO_X Ozone Season Group 1 allowances allocated under §§ 97.511 and 97.512 for, such control period, the unit shall be treated, solely for purposes of this definition, as being allocated an amount (rounded to the nearest allowance) of CSAPR NO_X Ozone Season Group 1 allowances for such control period equal to the unit's allowable NO_X emission rate applicable to such control period, multiplied by a capacity factor of 0.92 (if the unit is a boiler combusting any amount of coal or coal-derived fuel during such control period), 0.32 (if the unit is a simple cycle combustion turbine during such control period), 0.71 (if the unit is a combined cycle combustion turbine during such control period), 0.73 (if the unit is an integrated coal gasification combined cycle unit during such control period), or 0.44 (for any other unit), multiplied by the unit's maximum hourly load as reported in accordance with this subpart and by 3,672 hours/control period, and divided by 2,000 lb/ton.

Common designated representative's share means, with regard to a specific common designated representative for a control period in a given year and a total amount of NO_X emissions from all CSAPR NO_X Ozone Season Group 1 units in such State (and Indian country within the borders of such State) during such control period, the total tonnage of NO_X emissions during such control period from the group of one or more CSAPR NO_X Ozone Season Group 1

units located in such State (and such Indian country) and having the common designated representative for such control period.

* * * * *

CSAPR NO_X Ozone Season Group 3 allowance means a limited authorization issued and allocated or auctioned by the Administrator under subpart GGGGG of this part, § 97.526(c), or § 97.826(c), or by a State or permitting authority under a SIP revision approved by the Administrator under § 52.38(b)(10), (11), (12), or (13) of this chapter, to emit one ton of NO_X during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR NO_X Ozone Season Group 3 Trading Program.

CSAPR NO_X Ozone Season Group 3 Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with subpart GGGGG of this part and § 52.38(b)(1), (b)(2)(v), and (b)(10) through (15) and (18) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(11) or (12) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(10) or (13) of this chapter), as a means of mitigating interstate transport of ozone and NO_X.

* * * * *

Nitrogen oxides means all oxides of nitrogen except nitrous oxide (N_2O), reported on an equivalent molecular weight basis as nitrogen dioxide (NO_2).

* * * * *

§ 97.504 [Amended]

■ 49. In § 97.504, amend paragraph (b) introductory text by removing ''or (2)(i)'' and adding in its place ''or (b)(2)(i)''.

§ 97.505 [Amended]

■ 50. In § 97.505, amend paragraph (b) by removing the subject heading.

§ 97.506 [Amended]

■ 51. In § 97.506, amend paragraph (c)(4)(ii) by removing ''and (2)(i)'' and adding in its place ''and (c)(2)(i)''.

§ 97.510 [Amended]

■ 52. In § 97.510, amend paragraph (a)(4)(v) by removing ''481'' and adding in its place ''485''.

■ 53. Amend § 97.511 by:

■ a. Redesignating paragraph (b)(1)(i) as paragraph (b)(1)(i)(A), removing ''By June 1, 2015 and June 1 of each year thereafter,'' and adding in its place ''By June 1 of each year from 2015 through 2022,'';

■ b. Adding paragraph (b)(1)(i)(B);

■ c. In paragraph (b)(1)(ii)(A), removing ''through (7) and (12) and'' and adding in its place ''through (7) and (12) for a control period before 2023, or § 97.512(a)(2) through (7), (10), and (12) for a control period in 2023 or thereafter, and'';

■ d. Revising paragraph (b)(1)(ii)(B);

■ e. In paragraph (b)(1)(iii)(B), removing ''2017 or any subsequent year'' and adding in its place ''a year from 2017 through 2022'';

■ f. In paragraph (b)(1)(v), removing ''of this section,'' and adding in its place ''of this section for a control period before 2023, or in paragraph (b)(1)(ii) of this section for a control period in 2023 or thereafter,'';

■ g. Redesignating paragraph (b)(2)(i) as paragraph (b)(2)(i)(A), removing ''By June 1, 2015 and June 1 of each year thereafter,'' and adding in its place ''By June 1 of each year from 2015 through 2022,'';

■ h. Adding paragraph (b)(2)(i)(B);

■ i. In paragraph (b)(2)(ii)(A), removing ''through (7) and (12) and'' and adding in its place ''through (7) and (12) for a control period before 2023, or § 97.512(b)(2) through (7), (10), and (12) for a control period in 2023 or thereafter, and'';

■ j. Revising paragraph (b)(2)(ii)(B);

■ k. In paragraph (b)(2)(iii)(B), removing ''2017 or any subsequent year'' and adding in its place ''a year from 2017 through 2022'';

■ l. In paragraph (b)(2)(v), removing ''of this section,'' and adding in its place ''of this section for a control period before 2023, or in paragraph (b)(2)(ii) of this section for a control period in 2023 or thereafter,'';

■ m. In paragraph (c)(5)(i)(A), adding ''(or a subsequent control period)'' before ''for the State'';

■ n. In paragraph (c)(5)(i)(B), adding ''(or a subsequent control period)'' before ''in accordance with such SIP revision'';

■ o. In paragraph (c)(5)(ii)(A), adding ''(or a subsequent control period)'' before the semicolon at the end of the paragraph;

■ p. In paragraph (c)(5)(ii)(B), adding ''(or a subsequent control period)'' before ''in accordance with such SIP revision''; and

■ q. In paragraph (c)(5)(iii), adding ''(or a subsequent control period)'' before the period at the end of the paragraph.

The additions and revisions read as follows:

§ 97.511 Timing requirements for CSAPR NO_X Ozone Season Group 1 allowance allocations.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) By March 1, 2024 and March 1 of each year thereafter, the Administrator will calculate the CSAPR NO_X Ozone Season Group 1 allowance allocation to each CSAPR NO_X Ozone Season Group 1 unit in a State, in accordance with § 97.512(a)(2) through (7), (10), and (12), for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) * * *

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the applicable provisions referenced in paragraph (b)(1)(ii)(A) of this section. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(A) of this section for a control period before 2023, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(B) of this section for a control period in 2023 or thereafter, the Administrator will promulgate a notice of data availability of the calculations incorporating any adjustments that the Administrator determines to be necessary with regard to allocations under such applicable provisions and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(ii)(A) of this section.

* * * * *

(2) * * *

(i) * * *

(B) By March 1, 2024 and March 1 of each year thereafter, the Administrator will calculate the CSAPR NO_X Ozone Season Group 1 allowance allocation to each CSAPR NO_X Ozone Season Group 1 unit in a State, in accordance with § 97.512(b)(2) through (7), (10), and (12), for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) * * *

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the applicable provisions referenced in paragraph (b)(2)(ii)(A) of this section. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(A) of this section for a control period before 2023, or by May 1 immediately after the promulgation of each notice of data availability required

in paragraph (b)(2)(i)(B) of this section for a control period in 2023 or thereafter, the Administrator will promulgate a notice of data availability of the calculations incorporating any adjustments that the Administrator determines to be necessary with regard to allocations under such applicable provisions and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(ii)(A) of this section.

* * * * *

■ 54. Amend § 97.512 by:
■ a. Adding a subject heading to paragraph (a) introductory text;
■ b. In paragraph (a)(1)(i), removing ''§ 97.511(a)(1);'' and adding in its place ''§ 97.511(a)(1) and that have deadlines for certification of monitoring systems under § 97.530(b) not later than September 30 of the year of the control period;'';
■ c. In paragraph (a)(1)(iii), removing ''control period; or'' and adding in its place ''control period, for a control period before 2023, or that operate during such control period, for a control period in 2023 or thereafter; or'';
■ d. In paragraph (a)(3) introductory text, removing ''later'' and adding in its place ''latest'';
■ e. Revising paragraphs (a)(3)(ii) and (iv);
■ f. In paragraph (a)(4)(i), removing ''preceding control period.'' and adding in its place ''preceding control period, for a control period before 2023, or the unit's total tons of NO_X emissions during the control period, for a control period in 2023 or thereafter.'';
■ g. In paragraph (a)(5), adding ''allocation amounts of'' after ''sum of the'';
■ h. In paragraph (a)(8), removing ''The Administrator'' and adding in its place ''For a control period before 2023 only, the Administrator'';
■ i. In paragraph (a)(9) introductory text, removing ''If, after completion'' and adding in its place ''For a control period before 2023 only, if, after completion'';
■ j. In paragraph (a)(10), removing ''for such control period, any unallocated'' and adding in its place ''for a control period before 2023, or under paragraphs (a)(2) through (7) and (12) of this section for a control period in 2023 or thereafter, any unallocated'';
■ k. Redesignating paragraph (a)(11) as paragraph (a)(11)(i), removing ''The Administrator'' and adding in its place ''For a control period before 2023, the Administrator'';
■ l. Adding paragraph (a)(11)(ii);
■ m. Revising paragraph (a)(12);
■ n. Adding a subject heading to paragraph (b) introductory text;
■ o. In paragraph (b)(1)(i), removing ''§ 97.511(a)(1); or'' and adding in its place ''§ 97.511(a)(1) and that have deadlines for certification of monitoring systems under § 97.530(b) not later than September 30 of the year of the control period; or'';
■ p. Revising paragraph (b)(3)(ii);
■ q. In paragraph (b)(4)(i), removing ''preceding control period.'' and adding in its place ''preceding control period, for a control period before 2023, or the unit's total tons of NO_X emissions during the control period, for a control period in 2023 or thereafter.'';
■ r. In paragraph (b)(5), adding ''allocation amounts of'' after ''sum of the'';
■ s. In paragraph (b)(8), removing ''The Administrator'' and adding in its place ''For a control period before 2023 only, the Administrator'';
■ t. In paragraph (b)(9) introductory text, removing ''If, after completion'' and adding in its place ''For a control period before 2023 only, if, after completion'';
■ u. In paragraph (b)(10) introductory text, removing ''for such control period, any unallocated'' and adding in its place ''for a control period before 2023, or under paragraphs (b)(2) through (7) and (12) of this section for a control period in 2023 or thereafter, any unallocated'';
■ v. Redesignating paragraph (b)(11) as paragraph (b)(11)(i), removing ''The Administrator'' and adding in its place ''For a control period before 2023, the Administrator'';
■ w. Adding paragraph (b)(11)(ii); and
■ x. Revising paragraph (b)(12).

The additions and revisions read as follows:

§ 97.512 CSAPR NO_X Ozone Season Group 1 allowance allocations to new units.

(a) *Allocations from new unit set-asides.* * * *

* * * * *

(3) * * *

(ii) The first control period after the control period containing the deadline for certification of the CSAPR NO_X Ozone Season Group 1 unit's monitoring systems under § 97.530(b), for allocations for a control period before 2023, or the control period containing such deadline, for allocations for a control period in 2023 or thereafter;

* * * * *

(iv) For a unit described in paragraph (a)(1)(iii) of this section, the first control period after the control period in which the unit resumes operation, for allocations for a control period before 2023, or the control period in which the unit resumes operation, for allocations for a control period in 2023 or thereafter.

* * * * *

(11) * * *

(ii) For a control period in 2023 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.511(b)(1)(i), (ii), and (v), of the amount of CSAPR NO_X Ozone Season Group 1 allowances allocated under paragraphs (a)(2) through (7), (10), and (12) of this section for such control period to each CSAPR NO_X Ozone Season Group 1 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (a)(2) through (11) of this section, if the calculations of allocations from a new unit set-aside for a control period before 2023 under paragraph (a)(7) of this section, paragraphs (a)(6) and (a)(9)(iv) of this section, or paragraphs (a)(6), (a)(9)(iii), and (a)(10) of this section, or for a control period in 2023 or thereafter under paragraph (a)(7) of this section or paragraphs (a)(6) and (10) of this section, would otherwise result in total allocations from such new unit set-aside unequal to the total amount of such new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR NO_X Ozone Season Group 1 units in descending order based on such units' allocation amounts under paragraph (a)(7), (a)(9)(iv), or (a)(10) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR NO_X Ozone Season Group 1 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such new unit set-aside equal the total amount of such new unit set-aside.

(b) *Allocations from Indian country new unit set-asides.* * * *

* * * * *

(3) * * *

(ii) The first control period after the control period containing the deadline for certification of the CSAPR NO_X Ozone Season Group 1 unit's monitoring systems under § 97.530(b), for allocations for a control period before 2023, or the control period containing such deadline, for

allocations for a control period in 2023 or thereafter.

* * * * *

(11) * * *

(ii) For a control period in 2023 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.511(b)(2)(i), (ii), and (v), of the amount of CSAPR NO_X Ozone Season Group 1 allowances allocated under paragraphs (b)(2) through (7), (10), and (12) of this section for such control period to each CSAPR NO_X Ozone Season Group 1 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (b)(2) through (11) of this section, if the calculations of allocations from an Indian country new unit set-aside for a control period before 2023 under paragraph (b)(7) of this section or paragraphs (b)(6) and (b)(9)(iv) of this section, or for a control period in 2023 or thereafter under paragraph (b)(7) of this section, would otherwise result in total allocations from such Indian country new unit set-aside unequal to the total amount of such Indian country new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR NO_X Ozone Season Group 1 units in descending order based on such units' allocation amounts under paragraph (b)(7) or (b)(9)(iv) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR NO_X Ozone Season Group 1 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such Indian country new unit set-aside equal the total amount of such Indian country new unit set-aside.

§ 97.520 [Amended]

■ 55. In § 97.520, amend paragraph (c)(3)(iii)(B) by removing ''to NO_X'' and adding in its place ''to CSAPR NO_X''.

■ 56. Amend § 97.521 by:

■ a. Redesignating paragraph (f) as paragraph (f)(1), removing ''By July 1, 2019 and July 1 of each year thereafter,'' and adding in its place ''By July 1, 2019 and July 1, 2020,'';

■ b. Adding paragraph (f)(2);

■ c. Redesignating paragraph (g) as paragraph (g)(1), removing ''By August 1, 2015 and August 1 of each year thereafter,'' and adding in its place ''By August 1 of each year from 2015 through 2022,'';

■ d. Adding paragraph (g)(2);

■ e. Redesignating paragraph (h) as paragraph (h)(1), removing ''By August 1, 2015 and August 1 of each year thereafter,'' and adding in its place ''By August 1 of each year from 2015 through 2022,'';

■ f. Adding paragraph (h)(2); and

■ g. In paragraphs (i)(2) and (j)(2), removing ''By February 15, 2018 and February 15 of each year thereafter,'' and adding in its place ''By February 15 of each year from 2018 through 2023,''.

The additions read as follows:

§ 97.521 Recordation of CSAPR NO_X Ozone Season Group 1 allowance allocations and auction results.

* * * * *

(f) * * *

(2) By July 1, 2022 and July 1 of each year thereafter, the Administrator will record in each CSAPR NO_X Ozone Season Group 1 source's compliance account the CSAPR NO_X Ozone Season Group 1 allowances allocated to the CSAPR NO_X Ozone Season Group 1 units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Ozone Season Group 1 allowances auctioned to CSAPR NO_X Ozone Season Group 1 units, in accordance with § 97.511(a), or with a SIP revision approved under § 52.38(b)(4) or (5) of this chapter, for the control period in the third year after the year of the applicable recordation deadline under this paragraph.

(g) * * *

(2) By May 1, 2024 and May 1 of each year thereafter, the Administrator will record in each CSAPR NO_X Ozone Season Group 1 source's compliance account the CSAPR NO_X Ozone Season Group 1 allowances allocated to the CSAPR NO_X Ozone Season Group 1 units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Ozone Season Group 1 allowances auctioned to CSAPR NO_X Ozone Season Group 1 units, in accordance with § 97.512(a)(2) through (12), or with a SIP revision approved under § 52.38(b)(4) or (5) of this chapter, for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(h) * * *

(2) By May 1, 2024 and May 1 of each year thereafter, the Administrator will record in each CSAPR NO_X Ozone Season Group 1 source's compliance account the CSAPR NO_X Ozone Season Group 1 allowances allocated to the CSAPR NO_X Ozone Season Group 1 units at the source in accordance with § 97.512(b)(2) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

* * * * *

■ 57. Amend § 97.524 by adding a paragraph (c) subject heading and revising paragraph (c)(1) to read as follows:

§ 97.524 Compliance with CSAPR NO_X Ozone Season Group 1 emissions limitation.

* * * * *

(c) *Selection of CSAPR NO_X Ozone Season Group 1 allowances for deduction*—(1) *Identification by serial number.* The designated representative for a source may request that specific CSAPR NO_X Ozone Season Group 1 allowances, identified by serial number, in the source's compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the CSAPR NO_X Ozone Season Group 1 source and the appropriate serial numbers.

* * * * *

■ 58. Amend § 97.525 by:

■ a. Revising paragraphs (b)(1) introductory text and (b)(1)(ii);

■ b. In paragraph (b)(2)(i), removing ''By July 1'' and adding in its place ''For a control period before 2023 only, by July 1'';

■ c. Revising paragraphs (b)(2)(ii), (b)(2)(iii) introductory text, and (b)(2)(iii)(A);

■ d. In paragraph (b)(2)(iii)(B), removing ''such notice,'' and adding in its place ''such notice or notices,''; and

■ e. In paragraph (b)(6)(ii), removing ''If any such data'' and adding in its place ''For a control period before 2023 only, if any such data''.

The revisions read as follows:

§ 97.525 Compliance with CSAPR NO_X Ozone Season Group 1 assurance provisions.

* * * * *

(b) * * *

(1) By June 1 of each year from 2018 through 2023 and by August 1 of each year thereafter, the Administrator will:

* * * * *

(ii) If the calculations under paragraph (b)(1)(i) of this section indicate that the total NO_X emissions from all CSAPR NO_X Ozone Season Group 1 units at CSAPR NO_X Ozone

Season Group 1 sources in any State (and Indian country within the borders of such State) during such control period exceed the State assurance level for such control period, promulgate a notice of data availability of the results of the calculations required in paragraph (b)(1)(i) of this section, including separate calculations of the NO_X emissions from each CSAPR NO_X Ozone Season Group 1 source.

(2) * * *

(ii) The Administrator will calculate, for each such State (and Indian country within the borders of such State) and such control period and each common designated representative for such control period for a group of one or more CSAPR NO_X Ozone Season Group 1 sources and units in the State (and Indian country within the borders of such State), the common designated representative's share of the total NO_X emissions from all CSAPR NO_X Ozone Season Group 1 units at CSAPR NO_X Ozone Season Group 1 sources in the State (and Indian country within the borders of such State), the common designated representative's assurance level, and the amount (if any) of CSAPR NO_X Ozone Season Group 1 allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in § 97.506(c)(2)(i). For a control period before 2023, if the results of these calculations were not included in the notice of data availability required in paragraph (b)(1)(ii) of this section, the Administrator will promulgate a notice of data availability of the results of these calculations by August 1 immediately after the promulgation of such notice. For a control period in 2023 or thereafter, the Administrator will include the results of these calculations in the notice of data availability required in paragraph (b)(1)(ii) of this section.

(iii) The Administrator will provide an opportunity for submission of objections to the calculations referenced by the notice or notices of data availability required in paragraphs (b)(1)(ii) and (b)(2)(ii) of this section.

(A) Objections shall be submitted by the deadline specified in such notice or notices and shall be limited to addressing whether the calculations referenced in the notice or notices are in accordance with § 97.506(c)(2)(iii), §§ 97.506(b) and 97.530 through 97.535, the definitions of ''common designated representative'', ''common designated representative's assurance level'', and ''common designated representative's share'' in § 97.502, and the calculation formula in § 97.506(c)(2)(i).

* * * * *

■ 59. Amend § 97.526 by:

■ a. Revising the section heading;

■ b. Removing the paragraph (c) subject heading;

■ c. Revising paragraphs (c) introductory text, (c)(2) introductory text, (c)(2)(ii) and (iii), (c)(3) introductory text, (c)(3)(ii) and (iii), and (c)(4);

■ d. In paragraphs (c)(5)(i) and (ii), adding ''or CSAPR NO_X Ozone Season Group 3 allowances'' after ''CSAPR NO_X Ozone Season Group 2 allowances'';

■ e. In paragraph (c)(5)(iii), adding ''or CSAPR NO_X Ozone Season Group 3 allowances'' after ''CSAPR NO_X Ozone Season Group 2 allowances'' wherever it appears;

■ f. In paragraph (c)(6), adding ''or CSAPR NO_X Ozone Season Group 3 allowances, as applicable,'' after ''CSAPR NO_X Ozone Season Group 2 allowances'';

■ g. Revising paragraph (c)(7) introductory text;

■ h. In paragraph (c)(7)(i), adding ''or (iv)'' after ''§ 52.38(b)(2)(iii)''; and

■ i. Revising paragraph (c)(7)(ii).

The revisions read as follows:

§ 97.526 Banking and conversion.

* * * * *

(c) Notwithstanding any other provision of this subpart, part 52 of this chapter, or any SIP revision approved under § 52.38(b)(4) or (5) of this chapter, the Administrator will remove CSAPR NO_X Ozone Season Group 1 allowances from compliance accounts and general accounts and allocate in their place amounts of CSAPR NO_X Ozone Season Group 2 allowances or CSAPR NO_X Ozone Season Group 3 allowances as provided in paragraphs (c)(1) through (5) of this section and will record CSAPR NO_X Ozone Season Group 2 allowances or CSAPR NO_X Ozone Season Group 3 allowances in lieu of initially recording CSAPR NO_X Ozone Season Group 1 allowances as provided in paragraph (c)(6) of this section.

* * * * *

(2) As soon as practicable after approval of a SIP revision under § 52.38(b)(6) or (10) of this chapter for a State listed in § 52.38(b)(2)(i) of this chapter, but not later than the allowance transfer deadline defined under § 97.802 or § 97.1002 for the initial control period described with regard to such SIP revision in § 52.38(b)(6)(ii)(A) of this chapter or § 52.38(b)(10)(ii)(A) of this chapter, as applicable, the Administrator will temporarily suspend acceptance of CSAPR NO_X Ozone Season Group 1 allowance transfers submitted under § 97.522 and, before resuming acceptance of such transfers, will take the following actions with regard to every general account and every compliance account, unless otherwise provided in such approval of the SIP revision:

* * * * *

(ii) The Administrator will determine a conversion factor equal to the greater of 1.0000 or the quotient, expressed to four decimal places, of the NO_X Ozone Season Group 1 trading budget set forth for such State in § 97.510(a) divided by the NO_X Ozone Season Group 2 trading budget set forth for such State in § 97.810(a), in the case of a SIP revision under § 52.38(b)(6) of this chapter, or divided by the NO_X Ozone Season Group 3 trading budget set forth for such State in § 97.1010(a), in the case of a SIP revision under § 52.38(b)(10) of this chapter.

(iii) The Administrator will allocate to and record in each such account an amount of CSAPR NO_X Ozone Season Group 2 allowances, in the case of a SIP revision under § 52.38(b)(6) of this chapter, or CSAPR NO_X Ozone Season Group 3 allowances, in the case of a SIP revision under § 52.38(b)(10) of this chapter, for each control period for which CSAPR NO_X Ozone Season Group 1 allowances were removed from such account, where each such amount is determined as the quotient of the number of CSAPR NO_X Ozone Season Group 1 allowances for such control period removed from such account under paragraph (c)(2)(i) of this section divided by the conversion factor determined under paragraph (c)(2)(ii) of this section, rounded up to the nearest whole allowance, except as provided in paragraphs (c)(4) and (5) of this section.

(3) As soon as practicable after approval of a SIP revision under § 52.38(b)(6) or (10) of this chapter for a State listed in § 52.38(b)(2)(i) of this chapter, but not before the completion of deductions under § 97.524 for the control period before the initial control period described with regard to such SIP revision in § 52.38(b)(6)(ii)(A) of this chapter or § 52.38(b)(10)(ii)(A) of this chapter, as applicable, and not later than the allowance transfer deadline defined under § 97.802 or § 97.1002 for such initial control period, the Administrator will temporarily suspend acceptance of CSAPR NO_X Ozone Season Group 1 allowance transfers submitted under § 97.522 and, before resuming acceptance of such transfers, will take the following actions with regard to every compliance account for a CSAPR NO_X Ozone Season Group 1

source located in such State, provided that if the provisions of § 52.38(b)(2)(i) of this chapter or a SIP revision approved under § 52.38(b)(5) of this chapter will no longer apply to any source in any State or Indian country within the borders of any State with regard to emissions occurring in such initial control period or any subsequent control period, the Administrator instead will permanently end acceptance of CSAPR NO_X Ozone Season Group 1 allowance transfers submitted under § 97.522 and will take the following actions with regard to every general account and every compliance account:

* * * * *

(ii) The Administrator will determine a conversion factor equal to the greater of 1.0000 or the quotient, expressed to four decimal places, of the sum of all CSAPR NO_X Ozone Season Group 1 allowances removed from all such accounts under paragraph (c)(3)(i) of this section divided by the product of 1.5 times the variability limit for such initial control period set forth for such State in § 97.810(b), in the case of a SIP revision under § 52.38(b)(6) of this chapter, or divided by the variability limit for such initial control period set forth for such State in § 97.1010(b), in the case of a SIP revision under § 52.38(b)(10) of this chapter.

(iii) The Administrator will allocate to and record in each such account an amount of CSAPR NO_X Ozone Season Group 2 allowances, in the case of a SIP revision under § 52.38(b)(6) of this chapter, or CSAPR NO_X Ozone Season Group 3 allowances, in the case of a SIP revision under § 52.38(b)(10) of this chapter, for such initial control period, where such amount is determined as the quotient of the number of CSAPR NO_X Ozone Season Group 1 allowances removed from such account under paragraph (c)(3)(i) of this section divided by the conversion factor determined under paragraph (c)(3)(ii) of this section, rounded up to the nearest whole allowance, except as provided in paragraphs (c)(4) and (5) of this section.

(4)(i) Where, pursuant to paragraph (c)(1)(i), (c)(2)(i), or (c)(3)(i) of this section, the Administrator removes CSAPR NO_X Ozone Season Group 1 allowances from the compliance account for a source located in a State that is not listed in § 52.38(b)(2)(iii) or (v) of this chapter and for which no SIP revision has been approved under § 52.38(b)(6) or (10) of this chapter or Indian country within the borders of such a State, the Administrator will not record CSAPR NO_X Ozone Season Group 2 allowances or CSAPR NO_X Ozone Season Group 3 allowances in that compliance account but instead will allocate to and record in a general account CSAPR NO_X Ozone Season Group 2 allowances or CSAPR NO_X Ozone Season Group 3 allowances, as applicable, for the control periods and in the amounts determined in accordance with paragraph (c)(1)(iii), (c)(2)(iii), or (c)(3)(iii) of this section, respectively, provided that the designated representative for such source identifies such general account in a submission to the Administrator by the later of [DATE 90 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] or 180 days after the date on which the Administrator removes CSAPR NO_X Ozone Season Group 1 allowances from the source's compliance account under paragraph (c)(1)(i), (c)(2)(i), or (c)(3)(i) of this section.

(ii) If the designated representative for a source described in paragraph (c)(4)(i) of this section does not make a submission identifying a general account for recordation of CSAPR NO_X Ozone Season Group 2 allowances or CSAPR NO_X Ozone Season Group 3 allowances, as applicable, by the later of [DATE 90 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] or 180 days after the date on which the Administrator removes CSAPR NO_X Ozone Season Group 1 allowances from the source's compliance account under paragraph (c)(1)(i), (c)(2)(i), or (c)(3)(i) of this section, the Administrator will transfer the CSAPR NO_X Ozone Season Group 2 allowances or CSAPR NO_X Ozone Season Group 3 allowances to a surrender account. A submission by the designated representative under paragraph (c)(4)(i) of this section after such a transfer has taken place shall have no effect.

* * * * *

(7) Notwithstanding any other provision of this subpart or subpart EEEEE or GGGGG of this part, CSAPR NO_X Ozone Season Group 2 allowances or CSAPR NO_X Ozone Season Group 3 allowances may be used to satisfy requirements to hold CSAPR NO_X Ozone Season Group 1 allowances under this subpart as follows, provided that nothing in this paragraph alters the time as of which any such allowance holding requirement must be met or limits any consequence of a failure to timely meet any such allowance holding requirement:

* * * * *

(ii) After the Administrator has carried out the procedures set forth in paragraph (c)(3) of this section, the owner or operator of a CSAPR NO_X Ozone Season Group 1 unit in a State listed in § 52.38(b)(2)(i) of this chapter may satisfy a requirement to hold a given number of CSAPR NO_X Ozone Season Group 1 allowances for a control period before the initial control period described with regard to the State's SIP revision in § 52.38(b)(6)(ii)(A) or (b)(10)(ii)(A) of this chapter by holding instead, in a general account established for this sole purpose, an amount of CSAPR NO_X Ozone Season Group 2 allowances or CSAPR NO_X Ozone Season Group 3 allowances, as applicable, for such initial control period or any previous control period, where such amount of CSAPR NO_X Ozone Season Group 2 allowances or CSAPR NO_X Ozone Season Group 3 allowances is computed as the quotient of such given number of CSAPR NO_X Ozone Season Group 1 allowances divided by the conversion factor determined under paragraph (c)(3)(ii) of this section, rounded up to the nearest whole allowance.

§ 97.531 [Amended]

■ 60. In § 97.531, amend paragraph (d)(3) introductory text by removing in the last sentence ''with'' after ''is replaced by''.

Subpart CCCCC—CSAPR SO_2 Group 1 Trading Program

■ 61. Amend § 97.602 by:

■ a. Revising the definition of ''allowance transfer deadline'';

■ b. In the definition of ''alternate designated representative'', removing ''or CSAPR NO_X Ozone Season Group 2 Trading Program,'' and adding in its place ''CSAPR NO_X Ozone Season Group 2 Trading Program, or CSAPR NO_X Ozone Season Group 3 Trading Program,'';

■ c. In the definition of ''common designated representative'', removing ''such control period, the same'' and adding in its place ''such a control period before 2023, or as of July 1 immediately after such deadline for such a control period in 2023 or thereafter, the same'';

■ d. Revising the definitions of ''common designated representative's assurance level'' and ''common designated representative's share'';

■ e. In the definition of ''CSAPR NO_X Ozone Season Group 1 Trading Program'', removing ''(b)(3) through (5), and (b)(10) through (12)'' and adding in its place ''and (b)(3) through (5) and (14) through (16)'';

■ f. In the definition of ''CSAPR NO_X Ozone Season Group 2 Trading Program'', removing ''(b)(2)(i) and (iii),

(b)(6) through (11), and (b)(13)'' and adding in its place ''(b)(2)(iii) and (iv), and (b)(6) through (9), (14), (15), and (17)'';

■ g. Adding in alphabetical order a definition for ''CSAPR NO_X Ozone Season Group 3 Trading Program'';

■ h. In the definition of ''designated representative'', removing ''or CSAPR NO_X Ozone Season Group 2 Trading Program,'' and adding in its place ''CSAPR NO_X Ozone Season Group 2 Trading Program, or CSAPR NO_X Ozone Season Group 3 Trading Program,'';

■ i. In the definition of ''fossil fuel'', paragraph (2), removing ''§ 97.604(b)(2)(i)(B) and (ii)'' and adding in its place ''§ 97.604(b)(2)(i)(B) and (b)(2)(ii)''; and

■ j. Adding in alphabetical order a definition for ''nitrogen oxides''.

The revisions and additions read as follows:

§ 97.602 Definitions.

* * * * *

Allowance transfer deadline means, for a control period before 2023, midnight of March 1 immediately after such control period or, for a control period in 2023 or thereafter, midnight of June 1 immediately after such control period (or if such March 1 or June 1 is not a business day, midnight of the first business day thereafter) and is the deadline by which a CSAPR SO_2 Group 1 allowance transfer must be submitted for recordation in a CSAPR SO_2 Group 1 source's compliance account in order to be available for use in complying with the source's CSAPR SO_2 Group 1 emissions limitation for such control period in accordance with §§ 97.606 and 97.624.

* * * * *

Common designated representative's assurance level means, with regard to a specific common designated representative and a State (and Indian country within the borders of such State) and control period in a given year for which the State assurance level is exceeded as described in § 97.606(c)(2)(iii):

(1) The amount (rounded to the nearest allowance) equal to the sum of the total amount of CSAPR SO_2 Group 1 allowances allocated for such control period to the group of one or more CSAPR SO_2 Group 1 units located in such State (and such Indian country) and having the common designated representative for such control period and the total amount of CSAPR SO_2 Group 1 allowances purchased by an owner or operator of such CSAPR SO_2 Group 1 units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance accounts for such CSAPR SO_2 Group 1 units in accordance with the CSAPR SO_2 Group 1 allowance auction provisions in a SIP revision approved by the Administrator under § 52.39(e) or (f) of this chapter, multiplied by the sum of the State SO_2 Group 1 trading budget under § 97.610(a) and the State's variability limit under § 97.610(b) for such control period and divided by such State SO_2 Group 1 trading budget;

(2) Provided that, in the case of a unit that operates during, but has no amount of CSAPR SO_2 Group 1 allowances allocated under §§ 97.611 and 97.612 for, such control period, the unit shall be treated, solely for purposes of this definition, as being allocated an amount (rounded to the nearest allowance) of CSAPR SO_2 Group 1 allowances for such control period equal to the unit's allowable SO_2 emission rate applicable to such control period, multiplied by a capacity factor of 0.85 (if the unit is a boiler combusting any amount of coal or coal-derived fuel during such control period), 0.24 (if the unit is a simple cycle combustion turbine during such control period), 0.67 (if the unit is a combined cycle combustion turbine during such control period), 0.74 (if the unit is an integrated coal gasification combined cycle unit during such control period), or 0.36 (for any other unit), multiplied by the unit's maximum hourly load as reported in accordance with this subpart and by 8,760 hours/control period, and divided by 2,000 lb/ton.

Common designated representative's share means, with regard to a specific common designated representative for a control period in a given year and a total amount of SO_2 emissions from all CSAPR SO_2 Group 1 units in a State (and Indian country within the borders of such State) during such control period, the total tonnage of SO_2 emissions during such control period from the group of one or more CSAPR SO_2 Group 1 units located in such State (and such Indian country) and having the common designated representative for such control period.

* * * * *

CSAPR NO_X Ozone Season Group 3 Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with subpart GGGGG of this part and § 52.38(b)(1), (b)(2)(v), and (b)(10) through (15) and (18) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(11) or (12) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(10) or (13) of this chapter), as a means of mitigating interstate transport of ozone and NO_X.

* * * * *

Nitrogen oxides means all oxides of nitrogen except nitrous oxide (N_2O), reported on an equivalent molecular weight basis as nitrogen dioxide (NO_2).

* * * * *

§ 97.604 [Amended]

■ 62. In § 97.604, amend paragraph (b) introductory text by removing ''or (2)(i)'' and adding in its place ''or (b)(2)(i)''.

§ 97.605 [Amended]

■ 63. In § 97.605, amend paragraph (b) by removing the subject heading.

§ 97.606 [Amended]

■ 64. In § 97.606, amend paragraph (c)(4)(ii) by removing ''and (2)(i)'' and adding in its place ''and (c)(2)(i)''.

§ 97.610 [Amended]

■ 65. Amend § 97.610 by:

■ a. In paragraph (a)(1)(v), removing ''6,206'' and adding in its place ''6,223'';

■ b. In paragraph (a)(3)(v), removing ''1,429'' and adding in its place ''1,426'';

■ c. In paragraph (a)(4)(v), removing ''6,377'' and adding in its place ''6,381'';

■ d. In paragraph (a)(5)(v), removing ''564'' and adding in its place ''568'';

■ e. In paragraph (a)(6)(v), removing ''2,736'' and adding in its place ''2,743'';

■ f. In paragraph (a)(7)(v), removing ''4,978'' and adding in its place ''4,982'';

■ g. In paragraph (a)(8)(v), removing ''111'' and adding in its place ''110'';

■ h. In paragraph (a)(9)(v), removing ''523'' and adding in its place ''535'';

■ i. In paragraph (a)(10)(v), removing ''4,552'' and adding in its place ''4,559'';

■ j. In paragraph (a)(11)(v), removing ''2,845'' and adding in its place ''2,850'';

■ k. In paragraph (a)(12)(v), removing ''2,240'' and adding in its place ''2,242'';

■ l. In paragraph (a)(13)(v), removing ''1,177'' and adding in its place ''1,181'';

■ m. In paragraph (a)(14)(v), removing ''1,402'' and adding in its place ''1,401'';

■ n. In paragraph (a)(15)(v), removing ''5,297'' and adding in its place ''5,299''; and

■ o. In paragraph (a)(16)(v), removing ''1,867'' and adding in its place ''1,870'';

■ 66. Amend § 97.611 by:

■ a. Redesignating paragraph (b)(1)(i) as paragraph (b)(1)(i)(A), removing ''By June 1, 2015 and June 1 of each year thereafter,'' and adding in its place ''By June 1 of each year from 2015 through 2022,'';

■ b. Adding paragraph (b)(1)(i)(B);

■ c. In paragraph (b)(1)(ii)(A), removing ''through (7) and (12) and'' and adding

in its place ''through (7) and (12) for a control period before 2023, or § 97.612(a)(2) through (7), (10), and (12) for a control period in 2023 or thereafter, and'';

■ d. Revising paragraph (b)(1)(ii)(B);

■ e. In paragraph (b)(1)(iii), removing ''such control period'' and adding in its place ''a control period before 2023'';

■ f. In paragraphs (b)(1)(iv) introductory text and (b)(1)(iv)(A), removing ''SO_2 annual'' and adding in its place ''SO_2 Group 1'';

■ g. In paragraph (b)(1)(v), removing ''of this section,'' and adding in its place ''of this section for a control period before 2023, or in paragraph (b)(1)(ii) of this section for a control period in 2023 or thereafter,'';

■ h. Redesignating paragraph (b)(2)(i) as paragraph (b)(2)(i)(A), removing ''By June 1, 2015 and June 1 of each year thereafter,'' and adding in its place ''By June 1 of each year from 2015 through 2022,'';

■ i. Adding paragraph (b)(2)(i)(B);

■ j. In paragraph (b)(2)(ii)(A), removing ''through (7) and (12) and'' and adding in its place ''through (7) and (12) for a control period before 2023, or § 97.612(b)(2) through (7), (10), and (12) for a control period in 2023 or thereafter, and'';

■ k. Revising paragraph (b)(2)(ii)(B);

■ l. In paragraph (b)(2)(iii), removing ''such control period'' and adding in its place ''a control period before 2023'';

■ m. In paragraphs (b)(2)(iv) introductory text and (b)(2)(iv)(A), removing ''SO_2 annual'' and adding in its place ''SO_2 Group 1'';

■ n. In paragraph (b)(2)(v), removing ''of this section,'' and adding in its place ''of this section for a control period before 2023, or in paragraph (b)(2)(ii) of this section for a control period in 2023 or thereafter,'';

■ o. In paragraph (c)(5)(i)(A), adding ''(or a subsequent control period)'' before ''for the State'';

■ p. In paragraph (c)(5)(i)(B), adding ''(or a subsequent control period)'' before ''in accordance with such SIP revision'';

■ q. In paragraph (c)(5)(ii)(A), adding ''(or a subsequent control period)'' before the semicolon at the end of the paragraph;

■ r. In paragraph (c)(5)(ii)(B), adding ''(or a subsequent control period)'' before ''in accordance with such SIP revision''; and

■ s. In paragraph (c)(5)(iii), adding ''(or a subsequent control period)'' before the period at the end of the paragraph.

The additions and revisions read as follows:

§ 97.611 Timing requirements for CSAPR SO_2 Group 1 allowance allocations.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) By March 1, 2024 and March 1 of each year thereafter, the Administrator will calculate the CSAPR SO_2 Group 1 allowance allocation to each CSAPR SO_2 Group 1 unit in a State, in accordance with § 97.612(a)(2) through (7), (10), and (12), for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) * * *

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the applicable provisions referenced in paragraph (b)(1)(ii)(A) of this section. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(A) of this section for a control period before 2023, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(B) of this section for a control period in 2023 or thereafter, the Administrator will promulgate a notice of data availability of the calculations incorporating any adjustments that the Administrator determines to be necessary with regard to allocations under such applicable provisions and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(ii)(A) of this section.

* * * * *

(2) * * *

(i) * * *

(B) By March 1, 2024 and March 1 of each year thereafter, the Administrator will calculate the CSAPR SO_2 Group 1 allowance allocation to each CSAPR SO_2 Group 1 unit in Indian country within the borders of a State, in accordance with § 97.612(b)(2) through (7), (10), and (12), for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) * * *

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the applicable provisions referenced in paragraph (b)(2)(ii)(A) of this section. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(A) of this section for a control period before 2023, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(B) of this section for a control period in 2023 or thereafter, the Administrator will promulgate a notice of data availability of the calculations incorporating any adjustments that the Administrator determines to be necessary with regard to allocations under such applicable provisions and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(ii)(A) of this section.

* * * * *

■ 67. Amend § 97.612 by:

■ a. Adding a heading to paragraph (a) introductory text;

■ b. In paragraph (a)(1)(i), removing ''§ 97.611(a)(1);'' and adding in its place ''§ 97.611(a)(1) and that have deadlines for certification of monitoring systems under § 97.630(b) not later than December 31 of the year of the control period;'';

■ c. In paragraph (a)(1)(iii), removing ''control period; or'' and adding in its place ''control period, for a control period before 2023, or that operate during such control period, for a control period in 2023 or thereafter; or'';

■ d. In paragraph (a)(3) introductory text, removing ''later'' and adding in its place ''latest'';

■ e. Revising paragraphs (a)(3)(ii) and (iv) and (a)(4)(i);

■ f. In paragraph (a)(5), adding ''allocation amounts of'' after ''sum of the'';

■ g. In paragraph (a)(8), removing ''The Administrator'' and adding in its place ''For a control period before 2023 only, the Administrator'';

■ h. In paragraph (a)(9) introductory text, removing ''If, after completion'' and adding in its place ''For a control period before 2023 only, if, after completion'';

■ i. In paragraph (a)(10), removing ''for such control period, any unallocated'' and adding in its place ''for a control period before 2023, or under paragraphs (a)(2) through (7) and (12) of this section for a control period in 2023 or thereafter, any unallocated'';

■ j. Redesignating paragraph (a)(11) as paragraph (a)(11)(i), removing ''The Administrator'' and adding in its place ''For a control period before 2023, the Administrator'';

■ k. Adding paragraph (a)(11)(ii);

■ l. Revising paragraph (a)(12);

■ m. Adding a subject heading to paragraph (b) introductory text;

■ n. In paragraph (b)(1)(i), removing ''§ 97.611(a)(1); or'' and adding in its

place ''§ 97.611(a)(1) and that have deadlines for certification of monitoring systems under § 97.630(b) not later than December 31 of the year of the control period; or'';

■ o. Revising paragraphs (b)(3)(ii) and (b)(4)(i);

■ p. In paragraph (b)(5), adding ''allocation amounts of'' after ''sum of the'';

■ q. In paragraph (b)(8), removing ''The Administrator'' and adding in its place ''For a control period before 2023 only, the Administrator'';

■ r. In paragraph (b)(9) introductory text, removing ''If, after completion'' and adding in its place ''For a control period before 2023 only, if, after completion'';

■ s. In paragraph (b)(10) introductory text, removing ''for such control period, any unallocated'' and adding in its place ''for a control period before 2023, or under paragraphs (b)(2) through (7) and (12) of this section for a control period in 2023 or thereafter, any unallocated'';

■ t. Redesignating paragraph (b)(11) as paragraph (b)(11)(i), removing ''The Administrator'' and adding in its place ''For a control period before 2023, the Administrator'';

■ u. Adding paragraph (b)(11)(ii); and

■ v. Revising paragraph (b)(12).

The additions and revisions read as follows:

§ 97.612 CSAPR SO_2 Group 1 allowance allocations to new units.

(a) *Allocations from new unit set-asides.* * * *

* * * * *

(3) * * *

(ii) The first control period after the control period containing the deadline for certification of the CSAPR SO_2 Group 1 unit's monitoring systems under § 97.630(b), for allocations for a control period before 2023, or the control period containing such deadline, for allocations for a control period in 2023 or thereafter;

* * * * *

(iv) For a unit described in paragraph (a)(1)(iii) of this section, the first control period after the control period in which the unit resumes operation, for allocations for a control period before 2023, or the control period in which the unit resumes operation, for allocations for a control period in 2023 or thereafter.

(4)(i) The allocation to each CSAPR SO_2 Group 1 unit described in paragraphs (a)(1)(i) through (iii) of this section and for each control period described in paragraph (a)(3) of this section will be an amount equal to the unit's total tons of SO_2 emissions during the immediately preceding control period, for a control period before 2023, or the unit's total tons of SO_2 emissions during the control period, for a control period in 2023 or thereafter.

* * * * *

(11) * * *

(ii) For a control period in 2023 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.611(b)(1)(i), (ii), and (v), of the amount of CSAPR SO_2 Group 1 allowances allocated under paragraphs (a)(2) through (7), (10), and (12) of this section for such control period to each CSAPR SO_2 Group 1 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (a)(2) through (11) of this section, if the calculations of allocations from a new unit set-aside for a control period before 2023 under paragraph (a)(7) of this section, paragraphs (a)(6) and (a)(9)(iv) of this section, or paragraphs (a)(6), (a)(9)(iii), and (a)(10) of this section, or for a control period in 2023 or thereafter under paragraph (a)(7) of this section or paragraphs (a)(6) and (10) of this section, would otherwise result in total allocations from such new unit set-aside unequal to the total amount of such new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR SO_2 Group 1 units in descending order based on such units' allocation amounts under paragraph (a)(7), (a)(9)(iv), or (a)(10) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR SO_2 Group 1 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such new unit set-aside equal the total amount of such new unit set-aside.

(b) *Allocations from Indian country new unit set-asides.* * * *

* * * * *

(3) * * *

(ii) The first control period after the control period containing the deadline for certification of the CSAPR SO_2 Group 1 unit's monitoring systems under § 97.630(b), for allocations for a control period before 2023, or the control period containing such deadline, for allocations for a control period in 2023 or thereafter.

(4)(i) The allocation to each CSAPR SO_2 Group 1 unit described in paragraph (b)(1)(i) of this section and for each control period described in paragraph (b)(3) of this section will be an amount equal to the unit's total tons of SO_2 emissions during the immediately preceding control period, for a control period before 2023, or the unit's total tons of SO_2 emissions during the control period, for a control period in 2023 or thereafter.

* * * * *

(11) * * *

(ii) For a control period in 2023 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.611(b)(2)(i), (ii), and (v), of the amount of CSAPR SO_2 Group 1 allowances allocated under paragraphs (b)(2) through (7), (10), and (12) of this section for such control period to each CSAPR SO_2 Group 1 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (b)(2) through (11) of this section, if the calculations of allocations from an Indian country new unit set-aside for a control period before 2023 under paragraph (b)(7) of this section or paragraphs (b)(6) and (b)(9)(iv) of this section, or for a control period in 2023 or thereafter under paragraph (b)(7) of this section, would otherwise result in total allocations from such Indian country new unit set-aside unequal to the total amount of such Indian country new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR SO_2 Group 1 units in descending order based on such units' allocation amounts under paragraph (b)(7) or (b)(9)(iv) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR SO_2 Group 1 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such Indian country new unit set-aside equal the total amount of such Indian country new unit set-aside.

§ 97.620 [Amended]

■ 68. In § 97.620, amend paragraph (c)(3)(iii)(B) by removing ''to SO_2'' and adding in its place ''to CSAPR SO_2''.

■ 69. Amend § 97.621 by:

■ a. Redesignating paragraph (f) as paragraph (f)(1), removing ''By July 1, 2019 and July 1 of each year thereafter,'' and adding in its place ''By July 1, 2019 and July 1, 2020,'';
■ b. Adding paragraph (f)(2);
■ c. Redesignating paragraph (g) as paragraph (g)(1), removing ''By August 1, 2015 and August 1 of each year thereafter,'' and adding in its place ''By August 1 of each year from 2015 through 2022,'';
■ d. Adding paragraph (g)(2);
■ e. Redesignating paragraph (h) as paragraph (h)(1), removing ''By August 1, 2015 and August 1 of each year thereafter,'' and adding in its place ''By August 1 of each year from 2015 through 2022,'';
■ f. Adding paragraph (h)(2); and
■ g. In paragraphs (i) and (j), removing ''By February 15, 2016 and February 15 of each year thereafter,'' and adding in its place ''By February 15 of each year from 2016 through 2023,''.

The additions read as follows:

§ 97.621 Recordation of CSAPR SO_2 Group 1 allowance allocations and auction results.

* * * * *

(f) * * *

(2) By July 1, 2022 and July 1 of each year thereafter, the Administrator will record in each CSAPR SO_2 Group 1 source's compliance account the CSAPR SO_2 Group 1 allowances allocated to the CSAPR SO_2 Group 1 units at the source, or in each appropriate Allowance Management System account the CSAPR SO_2 Group 1 allowances auctioned to CSAPR SO_2 Group 1 units, in accordance with § 97.611(a), or with a SIP revision approved under § 52.39(e) or (f) of this chapter, for the control period in the third year after the year of the applicable recordation deadline under this paragraph.

(g) * * *

(2) By May 1, 2024 and May 1 of each year thereafter, the Administrator will record in each CSAPR SO_2 Group 1 source's compliance account the CSAPR SO_2 Group 1 allowances allocated to the CSAPR SO_2 Group 1 units at the source, or in each appropriate Allowance Management System account the CSAPR SO_2 Group 1 allowances auctioned to CSAPR SO_2 Group 1 units, in accordance with § 97.612(a)(2) through (12), or with a SIP revision approved under § 52.39(e) or (f) of this chapter, for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(h) * * *

(2) By May 1, 2024 and May 1 of each year thereafter, the Administrator will record in each CSAPR SO_2 Group 1 source's compliance account the CSAPR SO_2 Group 1 allowances allocated to the CSAPR SO_2 Group 1 units at the source in accordance with § 97.612(b)(2) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

* * * * *

■ 70. Amend § 97.624 by adding a paragraph (c) subject heading and revising paragraph (c)(1) to read as follows:

§ 97.624 Compliance with CSAPR SO_2 Group 1 emissions limitation.

* * * * *

(c) *Selection of CSAPR SO_2 Group 1 allowances for deduction*—(1) *Identification by serial number.* The designated representative for a source may request that specific CSAPR SO_2 Group 1 allowances, identified by serial number, in the source's compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the CSAPR SO_2 Group 1 source and the appropriate serial numbers.

* * * * *

■ 71. Amend § 97.625 by:
■ a. Revising paragraphs (b)(1) introductory text and (b)(1)(ii);
■ b. In paragraph (b)(2)(i), removing ''By July 1'' and adding in its place ''For a control period before 2023 only, by July 1'';
■ c. Revising paragraphs (b)(2)(ii), (b)(2)(iii) introductory text, and (b)(2)(iii)(A);
■ d. In paragraph (b)(2)(iii)(B), removing ''such notice,'' and adding in its place ''such notice or notices,''; and
■ e. In paragraph (b)(6)(ii), removing ''If any such data'' and adding in its place ''For a control period before 2023 only, if any such data''.

The revisions read as follows:

§ 97.625 Compliance with CSAPR SO_2 Group 1 assurance provisions.

* * * * *

(b) * * *

(1) By June 1 of each year from 2018 through 2023 and by August 1 of each year thereafter, the Administrator will:

* * * * *

(ii) If the calculations under paragraph (b)(1)(i) of this section indicate that the total SO_2 emissions from all CSAPR SO_2 Group 1 units at CSAPR SO_2 Group 1 sources in any State (and Indian country within the borders of such State) during such control period exceed the State assurance level for such control period, promulgate a notice of data availability of the results of the calculations required in paragraph (b)(1)(i) of this section, including separate calculations of the SO_2 emissions from each CSAPR SO_2 Group 1 source.

(2) * * *

(ii) The Administrator will calculate, for each such State (and Indian country within the borders of such State) and such control period and each common designated representative for such control period for a group of one or more CSAPR SO_2 Group 1 sources and units in the State (and Indian country within the borders of such State), the common designated representative's share of the total SO_2 emissions from all CSAPR SO_2 Group 1 units at CSAPR SO_2 Group 1 sources in the State (and Indian country within the borders of such State), the common designated representative's assurance level, and the amount (if any) of CSAPR SO_2 Group 1 allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in § 97.606(c)(2)(i). For a control period before 2023, if the results of these calculations were not included in the notice of data availability required in paragraph (b)(1)(ii) of this section, the Administrator will promulgate a notice of data availability of the results of these calculations by August 1 immediately after the promulgation of such notice. For a control period in 2023 or thereafter, the Administrator will include the results of these calculations in the notice of data availability required in paragraph (b)(1)(ii) of this section.

(iii) The Administrator will provide an opportunity for submission of objections to the calculations referenced by the notice or notices of data availability required in paragraphs (b)(1)(ii) and (b)(2)(ii) of this section.

(A) Objections shall be submitted by the deadline specified in such notice or notices and shall be limited to addressing whether the calculations referenced in the notice or notices are in accordance with § 97.606(c)(2)(iii), §§ 97.606(b) and 97.630 through 97.635, the definitions of ''common designated representative'', ''common designated representative's assurance level'', and ''common designated representative's share'' in § 97.602, and the calculation formula in § 97.606(c)(2)(i).

* * * * *

§ 97.634 [Amended]

■ 72. In § 97.634, amend paragraph (d)(3) by removing ''or CSAPR NO_X Ozone Season Group 2 Trading Program,'' and adding in its place ''CSAPR NO_X Ozone Season Group 2 Trading Program, or CSAPR NO_X Ozone Season Group 3 Trading Program,''.

Subpart DDDDD—CSAPR SO_2 Group 2 Trading Program

■ 73. Amend § 97.702 by:
■ a. Revising the definition of ''allowance transfer deadline'';
■ b. In the definition of ''alternate designated representative'', removing ''or CSAPR NO_X Ozone Season Group 2 Trading Program,'' and adding in its place ''CSAPR NO_X Ozone Season Group 2 Trading Program, or CSAPR NO_X Ozone Season Group 3 Trading Program,'';
■ c. In the definition of ''common designated representative'', removing ''such control period, the same'' and adding in its place ''such a control period before 2023, or as of July 1 immediately after such deadline for such a control period in 2023 or thereafter, the same'';
■ d. Revising the definitions of ''common designated representative's assurance level'' and ''common designated representative's share'';
■ e. In the definition of ''CSAPR NO_X Ozone Season Group 1 Trading Program'', removing ''(b)(3) through (5), and (b)(10) through (12)'' and adding in its place ''and (b)(3) through (5) and (14) through (16)'';
■ f. In the definition of ''CSAPR NO_X Ozone Season Group 2 Trading Program'', removing ''(b)(2)(i) and (iii), (b)(6) through (11), and (b)(13)'' and adding in its place ''(b)(2)(iii) and (iv), and (b)(6) through (9), (14), (15), and (17)'';
■ g. Adding in alphabetical order a definition for ''CSAPR NO_X Ozone Season Group 3 Trading Program'';
■ h. In the definition of ''designated representative'', removing ''or CSAPR NO_X Ozone Season Group 2 Trading Program,'' and adding in its place ''CSAPR NO_X Ozone Season Group 2 Trading Program, or CSAPR NO_X Ozone Season Group 3 Trading Program,'';
■ i. In the definition of ''fossil fuel'', paragraph (2), removing ''§ 97.704(b)(2)(i)(B) and (ii)'' and adding in its place ''§ 97.704(b)(2)(i)(B) and (b)(2)(ii)''; and
■ j. Adding in alphabetical order a definition for ''nitrogen oxides''.

The revisions and additions read as follows:

§ 97.702 Definitions.

* * * * *

Allowance transfer deadline means, for a control period before 2023, midnight of March 1 immediately after such control period or, for a control period in 2023 or thereafter, midnight of June 1 immediately after such control period (or if such March 1 or June 1 is not a business day, midnight of the first business day thereafter) and is the deadline by which a CSAPR SO_2 Group 2 allowance transfer must be submitted for recordation in a CSAPR SO_2 Group 2 source's compliance account in order to be available for use in complying with the source's CSAPR SO_2 Group 2 emissions limitation for such control period in accordance with §§ 97.706 and 97.724.

* * * * *

Common designated representative's assurance level means, with regard to a specific common designated representative and a State (and Indian country within the borders of such State) and control period in a given year for which the State assurance level is exceeded as described in § 97.706(c)(2)(iii):

(1) The amount (rounded to the nearest allowance) equal to the sum of the total amount of CSAPR SO_2 Group 2 allowances allocated for such control period to the group of one or more CSAPR SO_2 Group 2 units located in the State (and such Indian country) and having the common designated representative for such control period and the total amount of CSAPR SO_2 Group 2 allowances purchased by an owner or operator of such CSAPR SO_2 Group 2 units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance accounts for such CSAPR SO_2 Group 2 units in accordance with the CSAPR SO_2 Group 2 allowance auction provisions in a SIP revision approved by the Administrator under § 52.39(h) or (i) of this chapter, multiplied by the sum of the State SO_2 Group 2 trading budget under § 97.710(a) and the State's variability limit under § 97.710(b) for such control period and divided by such State SO_2 Group 2 trading budget;

(2) Provided that, in the case of a unit that operates during, but has no amount of CSAPR SO_2 Group 2 allowances allocated under §§ 97.711 and 97.712 for, such control period, the unit shall be treated, solely for purposes of this definition, as being allocated an amount (rounded to the nearest allowance) of CSAPR SO_2 Group 2 allowances for such control period equal to the unit's allowable SO_2 emission rate applicable to such control period, multiplied by a capacity factor of 0.85 (if the unit is a boiler combusting any amount of coal or coal-derived fuel during such control period), 0.24 (if the unit is a simple cycle combustion turbine during such control period), 0.67 (if the unit is a combined cycle combustion turbine during such control period), 0.74 (if the unit is an integrated coal gasification combined cycle unit during such control period), or 0.36 (for any other unit), multiplied by the unit's maximum hourly load as reported in accordance with this subpart and by 8,760 hours/control period, and divided by 2,000 lb/ton.

Common designated representative's share means, with regard to a specific common designated representative for a control period in a given year and a total amount of SO_2 emissions from all CSAPR SO_2 Group 2 units in a State (and Indian country within the borders of such State) during such control period, the total tonnage of SO_2 emissions during such control period from the group of one or more CSAPR SO_2 Group 2 units located in such State (and such Indian country) and having the common designated representative for such control period.

* * * * *

CSAPR NO_X Ozone Season Group 3 Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with subpart GGGGG of this part and § 52.38(b)(1), (b)(2)(v), and (b)(10) through (15) and (18) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(11) or (12) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(10) or (13) of this chapter), as a means of mitigating interstate transport of ozone and NO_X.

* * * * *

Nitrogen oxides means all oxides of nitrogen except nitrous oxide (N_2O), reported on an equivalent molecular weight basis as nitrogen dioxide (NO_2).

* * * * *

§ 97.704 [Amended]

■ 74. In § 97.704, amend paragraph (b) introductory text by removing ''or (2)(i)'' and adding in its place ''or (b)(2)(i)''.

§ 97.705 [Amended]

■ 75. In § 97.705, amend paragraph (b) by removing the subject heading.

§ 97.706 [Amended]

■ 76. In § 97.706, amend paragraph (c)(4)(ii) by removing ''and (2)(i)'' and adding in its place ''and (c)(2)(i)''.

§ 97.710 [Amended]

■ 77. Amend § 97.710 by:
■ a. In paragraph (a) introductory text, removing ''Group 1 allowances'' and adding in its place ''Group 2 allowances'';
■ b. In paragraph (a)(2)(v), removing ''2,711'' and adding in its place ''2,721'';
■ c. In paragraph (a)(3)(v), removing ''798'' and adding in its place ''801'';
■ d. In paragraph (a)(4)(v), removing ''798'' and adding in its place ''800''; and
■ e. In paragraph (a)(5)(v), removing ''2,658'' and adding in its place ''2,662'';
■ 78. Amend § 97.711 by:
■ a. Redesignating paragraph (b)(1)(i) as paragraph (b)(1)(i)(A), removing ''By June 1, 2015 and June 1 of each year thereafter,'' and adding in its place ''By June 1 of each year from 2015 through 2022,'';
■ b. Adding paragraph (b)(1)(i)(B);
■ c. In paragraph (b)(1)(ii)(A), removing ''through (7) and (12) and'' and adding in its place ''through (7) and (12) for a control period before 2023, or § 97.712(a)(2) through (7), (10), and (12) for a control period in 2023 or thereafter, and'';
■ d. Revising paragraph (b)(1)(ii)(B);
■ e. In paragraph (b)(1)(iii), removing ''such control period'' and adding in its place ''a control period before 2023'';
■ f. In paragraphs (b)(1)(iv) introductory text and (b)(1)(iv)(A), removing ''SO_2 annual'' and adding in its place ''SO_2 Group 2'';
■ g. In paragraph (b)(1)(v), removing ''of this section,'' and adding in its place ''of this section for a control period before 2023, or in paragraph (b)(1)(ii) of this section for a control period in 2023 or thereafter,'';
■ h. Redesignating paragraph (b)(2)(i) as paragraph (b)(2)(i)(A), removing ''By June 1, 2015 and June 1 of each year thereafter,'' and adding in its place ''By June 1 of each year from 2015 through 2022,'';
■ i. Adding paragraph (b)(2)(i)(B);
■ j. In paragraph (b)(2)(ii)(A), removing ''through (7) and (12) and'' and adding in its place ''through (7) and (12) for a control period before 2023, or § 97.712(b)(2) through (7), (10), and (12) for a control period in 2023 or thereafter, and'';
■ k. Revising paragraph (b)(2)(ii)(B);
■ l. In paragraph (b)(2)(iii), removing ''such control period'' and adding in its place ''a control period before 2023'';
■ m. In paragraphs (b)(2)(iv) introductory text and (b)(2)(iv)(A), removing ''SO_2 annual'' and adding in its place ''SO_2 Group 2'';
■ n. In paragraph (b)(2)(v), removing ''of this section,'' and adding in its place ''of this section for a control period before 2023, or in paragraph (b)(2)(ii) of this section for a control period in 2023 or thereafter,'';
■ o. In paragraph (c)(5)(i)(A), adding ''(or a subsequent control period)'' before ''for the State'';
■ p. In paragraph (c)(5)(i)(B), adding ''(or a subsequent control period)'' before ''in accordance with such SIP revision'';
■ q. In paragraph (c)(5)(ii)(A), adding ''(or a subsequent control period)'' before the semicolon at the end of the paragraph;
■ r. In paragraph (c)(5)(ii)(B), adding ''(or a subsequent control period)'' before ''in accordance with such SIP revision''; and
■ s. In paragraph (c)(5)(iii), adding ''(or a subsequent control period)'' before the period at the end of the paragraph.

The additions and revisions read as follows:

§ 97.711 Timing requirements for CSAPR SO_2 Group 2 allowance allocations.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) By March 1, 2024 and March 1 of each year thereafter, the Administrator will calculate the CSAPR SO_2 Group 2 allowance allocation to each CSAPR SO_2 Group 2 unit in a State, in accordance with § 97.712(a)(2) through (7), (10), and (12), for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) * * *

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the applicable provisions referenced in paragraph (b)(1)(ii)(A) of this section. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(A) of this section for a control period before 2023, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(B) of this section for a control period in 2023 or thereafter, the Administrator will promulgate a notice of data availability of the calculations incorporating any adjustments that the Administrator determines to be necessary with regard to allocations under such applicable provisions and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(ii)(A) of this section.

* * * * *

(2) * * *

(i) * * *

(B) By March 1, 2024 and March 1 of each year thereafter, the Administrator will calculate the CSAPR SO_2 Group 2 allowance allocation to each CSAPR SO_2 Group 2 unit in Indian country within the borders of a State, in accordance with § 97.712(b)(2) through (7), (10), and (12), for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) * * *

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the applicable provisions referenced in paragraph (b)(2)(ii)(A) of this section. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(A) of this section for a control period before 2023, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(B) of this section for a control period in 2023 or thereafter, the Administrator will promulgate a notice of data availability of the calculations incorporating any adjustments that the Administrator determines to be necessary with regard to allocations under such applicable provisions and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(ii)(A) of this section.

* * * * *

■ 79. Amend § 97.712 by:
■ a. Adding a subject heading to paragraph (a) introductory text;
■ b. In paragraph (a)(1)(i), removing ''§ 97.711(a)(1);'' and adding in its place ''§ 97.711(a)(1) and that have deadlines for certification of monitoring systems under § 97.730(b) not later than December 31 of the year of the control period;'';
■ c. In paragraph (a)(1)(iii), removing ''control period; or'' and adding in its place ''control period, for a control period before 2023, or that operate during such control period, for a control period in 2023 or thereafter; or'';
■ d. In paragraph (a)(3) introductory text, removing ''later'' and adding in its place ''latest'';
■ e. Revising paragraphs (a)(3)(ii) and (iv) and (a)(4)(i);
■ f. In paragraph (a)(5), adding ''allocation amounts of'' after ''sum of the'';
■ g. In paragraph (a)(8), removing ''The Administrator'' and adding in its place ''For a control period before 2023 only, the Administrator'';

■ h. In paragraph (a)(9) introductory text, removing ''If, after completion'' and adding in its place ''For a control period before 2023 only, if, after completion'';
■ i. In paragraph (a)(10), removing ''for such control period, any unallocated'' and adding in its place ''for a control period before 2023, or under paragraphs (a)(2) through (7) and (12) of this section for a control period in 2023 or thereafter, any unallocated'';
■ j. Redesignating paragraph (a)(11) as paragraph (a)(11)(i), removing ''The Administrator'' and adding in its place ''For a control period before 2023, the Administrator'';
■ k. Adding paragraph (a)(11)(ii);
■ l. Revising paragraph (a)(12);
■ m. Adding a subject heading to paragraph (b) introductory text;
■ n. In paragraph (b)(1)(i), removing ''§ 97.711(a)(1); or'' and adding in its place ''§ 97.711(a)(1) and that have deadlines for certification of monitoring systems under § 97.730(b) not later than December 31 of the year of the control period; or'';
■ o. Revising paragraphs (b)(3)(ii) and (b)(4)(i);
■ p. In paragraph (b)(5), adding ''allocation amounts of'' after ''sum of the'';
■ q. In paragraph (b)(8), removing ''The Administrator'' and adding in its place ''For a control period before 2023 only, the Administrator'';
■ r. In paragraph (b)(9) introductory text, removing ''If, after completion'' and adding in its place ''For a control period before 2023 only, if, after completion'';
■ s. In paragraph (b)(10) introductory text, removing ''for such control period, any unallocated'' and adding in its place ''for a control period before 2023, or under paragraphs (b)(2) through (7) and (12) of this section for a control period in 2023 or thereafter, any unallocated'';
■ t. Redesignating paragraph (b)(11) as paragraph (b)(11)(i), removing ''The Administrator'' and adding in its place ''For a control period before 2023, the Administrator'';
■ u. Adding paragraph (b)(11)(ii); and
■ v. Revising paragraph (b)(12).

The additions and revisions read as follows:

§ 97.712 CSAPR SO_2 Group 2 allowance allocations to new units.

(a) *Allocations from new unit set-asides.* * * *

* * * * *

(3) * * *

(ii) The first control period after the control period containing the deadline for certification of the CSAPR SO_2 Group 2 unit's monitoring systems under § 97.730(b), for allocations for a control period before 2023, or the control period containing such deadline, for allocations for a control period in 2023 or thereafter;

* * * * *

(iv) For a unit described in paragraph (a)(1)(iii) of this section, the first control period after the control period in which the unit resumes operation, for allocations for a control period before 2023, or the control period in which the unit resumes operation, for allocations for a control period in 2023 or thereafter.

(4)(i) The allocation to each CSAPR SO_2 Group 2 unit described in paragraphs (a)(1)(i) through (iii) of this section and for each control period described in paragraph (a)(3) of this section will be an amount equal to the unit's total tons of SO_2 emissions during the immediately preceding control period, for a control period before 2023, or the unit's total tons of SO_2 emissions during the control period, for a control period in 2023 or thereafter.

* * * * *

(11) * * *

(ii) For a control period in 2023 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.711(b)(1)(i), (ii), and (v), of the amount of CSAPR SO_2 Group 2 allowances allocated under paragraphs (a)(2) through (7), (10), and (12) of this section for such control period to each CSAPR SO_2 Group 2 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (a)(2) through (11) of this section, if the calculations of allocations from a new unit set-aside for a control period before 2023 under paragraph (a)(7) of this section, paragraphs (a)(6) and (a)(9)(iv) of this section, or paragraphs (a)(6), (a)(9)(iii), and (a)(10) of this section, or for a control period in 2023 or thereafter under paragraph (a)(7) of this section or paragraphs (a)(6) and (10) of this section, would otherwise result in total allocations from such new unit set-aside unequal to the total amount of such new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR SO_2 Group 2 units in descending order based on such units' allocation amounts under paragraph (a)(7), (a)(9)(iv), or (a)(10) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR SO_2 Group 2 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such new unit set-aside equal the total amount of such new unit set-aside.

(b) *Allocations from Indian country new unit set-asides.* * * *

* * * * *

(3) * * *

(ii) The first control period after the control period containing the deadline for certification of the CSAPR SO_2 Group 2 unit's monitoring systems under § 97.730(b), for allocations for a control period before 2023, or the control period containing such deadline, for allocations for a control period in 2023 or thereafter.

(4)(i) The allocation to each CSAPR SO_2 Group 2 unit described in paragraph (b)(1)(i) of this section and for each control period described in paragraph (b)(3) of this section will be an amount equal to the unit's total tons of SO_2 emissions during the immediately preceding control period, for a control period before 2023, or the unit's total tons of SO_2 emissions during the control period, for a control period in 2023 or thereafter.

* * * * *

(11) * * *

(ii) For a control period in 2023 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.711(b)(2)(i), (ii), and (v), of the amount of CSAPR SO_2 Group 2 allowances allocated under paragraphs (b)(2) through (7), (10), and (12) of this section for such control period to each CSAPR SO_2 Group 2 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (b)(2) through (11) of this section, if the calculations of allocations from an Indian country new unit set-aside for a control period before 2023 under paragraph (b)(7) of this section or paragraphs (b)(6) and (b)(9)(iv) of this section, or for a control period in 2023 or thereafter under paragraph (b)(7) of this section, would otherwise result in total allocations from such Indian country new unit set-aside unequal to the total amount of such Indian country new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR SO_2 Group 2 units in descending order based on such units' allocation amounts under paragraph (b)(7) or (b)(9)(iv) of this

section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR SO_2 Group 2 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such Indian country new unit set-aside equal the total amount of such Indian country new unit set-aside.

§ 97.720 [Amended]

■ 80. In § 97.720, amend paragraph (c)(3)(iii)(B) by removing ''to SO_2'' and adding in its place ''to CSAPR SO_2''.

■ 81. Amend § 97.721 by:

■ a. Redesignating paragraph (f) as paragraph (f)(1), removing ''By July 1, 2019 and July 1 of each year thereafter,'' and adding in its place ''By July 1, 2019 and July 1, 2020,'';

■ b. Adding paragraph (f)(2);

■ c. Redesignating paragraph (g) as paragraph (g)(1), removing ''By August 1, 2015 and August 1 of each year thereafter,'' and adding in its place ''By August 1 of each year from 2015 through 2022,'';

■ d. Adding paragraph (g)(2);

■ e. Redesignating paragraph (h) as paragraph (h)(1), removing ''By August 1, 2015 and August 1 of each year thereafter,'' and adding in its place ''By August 1 of each year from 2015 through 2022,'';

■ f. Adding paragraph (h)(2); and

■ g. In paragraphs (i) and (j), removing ''By February 15, 2016 and February 15 of each year thereafter,'' and adding in its place ''By February 15 of each year from 2016 through 2023,''.

The additions read as follows:

§ 97.721 Recordation of CSAPR SO_2 Group 2 allowance allocations and auction results.

* * * * *

(f) * * *

(2) By July 1, 2022 and July 1 of each year thereafter, the Administrator will record in each CSAPR SO_2 Group 2 source's compliance account the CSAPR SO_2 Group 2 allowances allocated to the CSAPR SO_2 Group 2 units at the source, or in each appropriate Allowance Management System account the CSAPR SO_2 Group 2 allowances auctioned to CSAPR SO_2 Group 2 units, in accordance with § 97.711(a), or with a SIP revision approved under § 52.39(h) or (i) of this chapter, for the control period in the third year after the year of the applicable recordation deadline under this paragraph.

(g) * * *

(2) By May 1, 2024 and May 1 of each year thereafter, the Administrator will record in each CSAPR SO_2 Group 2 source's compliance account the CSAPR SO_2 Group 2 allowances allocated to the CSAPR SO_2 Group 2 units at the source, or in each appropriate Allowance Management System account the CSAPR SO_2 Group 2 allowances auctioned to CSAPR SO_2 Group 2 units, in accordance with § 97.712(a)(2) through (12), or with a SIP revision approved under § 52.39(h) or (i) of this chapter, for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(h) * * *

(2) By May 1, 2024 and May 1 of each year thereafter, the Administrator will record in each CSAPR SO_2 Group 2 source's compliance account the CSAPR SO_2 Group 2 allowances allocated to the CSAPR SO_2 Group 2 units at the source in accordance with § 97.712(b)(2) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

* * * * *

■ 82. Amend § 97.724 by adding a paragraph (c) subject heading and revising paragraph (c)(1) to read as follows:

§ 97.724 Compliance with CSAPR SO_2 Group 2 emissions limitation.

* * * * *

(c) *Selection of CSAPR SO_2 Group 2 allowances for deduction*—(1) *Identification by serial number.* The designated representative for a source may request that specific CSAPR SO_2 Group 2 allowances, identified by serial number, in the source's compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the CSAPR SO_2 Group 2 source and the appropriate serial numbers.

* * * * *

■ 83. Amend § 97.725 by:

■ a. Revising paragraphs (b)(1) introductory text and (b)(1)(ii);

■ b. In paragraph (b)(2)(i), removing ''By July 1'' and adding in its place ''For a control period before 2023 only, by July 1'';

■ c. Revising paragraphs (b)(2)(ii), (b)(2)(iii) introductory text, and (b)(2)(iii)(A);

■ d. In paragraph (b)(2)(iii)(B), removing ''such notice,'' and adding in its place ''such notice or notices,''; and

■ e. In paragraph (b)(6)(ii), removing ''If any such data'' and adding in its place ''For a control period before 2023 only, if any such data''.

The revisions read as follows:

§ 97.725 Compliance with CSAPR SO_2 Group 2 assurance provisions.

* * * * *

(b) * * *

(1) By June 1 of each year from 2018 through 2023 and by August 1 of each year thereafter, the Administrator will:

* * * * *

(ii) If the calculations under paragraph (b)(1)(i) of this section indicate that the total SO_2 emissions from all CSAPR SO_2 Group 2 units at CSAPR SO_2 Group 2 sources in any State (and Indian country within the borders of such State) during such control period exceed the State assurance level for such control period, promulgate a notice of data availability of the results of the calculations required in paragraph (b)(1)(i) of this section, including separate calculations of the SO_2 emissions from each CSAPR SO_2 Group 2 source.

(2) * * *

(ii) The Administrator will calculate, for each such State (and Indian country within the borders of such State) and such control period and each common designated representative for such control period for a group of one or more CSAPR SO_2 Group 2 sources and units in the State (and Indian country within the borders of such State), the common designated representative's share of the total SO_2 emissions from all CSAPR SO_2 Group 2 units at CSAPR SO_2 Group 2 sources in the State (and Indian country within the borders of such State), the common designated representative's assurance level, and the amount (if any) of CSAPR SO_2 Group 2 allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in § 97.706(c)(2)(i). For a control period before 2023, if the results of these calculations were not included in the notice of data availability required in paragraph (b)(1)(ii) of this section, the Administrator will promulgate a notice of data availability of the results of these calculations by August 1 immediately after the promulgation of such notice. For a control period in 2023 or thereafter, the Administrator will include the results of these calculations in the notice of data availability required in paragraph (b)(1)(ii) of this section.

(iii) The Administrator will provide an opportunity for submission of objections to the calculations referenced by the notice or notices of data availability required in paragraphs (b)(1)(ii) and (b)(2)(ii) of this section.

(A) Objections shall be submitted by the deadline specified in such notice or notices and shall be limited to addressing whether the calculations referenced in the notice or notices are in accordance with § 97.706(c)(2)(iii), §§ 97.706(b), and 97.730 through 97.735, the definitions of ''common designated representative'', ''common designated representative's assurance level'', and ''common designated representative's share'' in § 97.702, and the calculation formula in § 97.706(c)(2)(i).

* * * * *

§ 97.731 [Amended]

■ 84. In § 97.731, amend paragraph (d)(3) introductory text by removing in the last sentence ''with'' after ''is replaced by''.

§ 97.734 [Amended]

■ 85. In § 97.734, amend paragraph (d)(3) by removing ''or CSAPR NO_X Ozone Season Group 2 Trading Program,'' and adding in its place ''CSAPR NO_X Ozone Season Group 2 Trading Program, or CSAPR NO_X Ozone Season Group 3 Trading Program,''.

Subpart EEEEE—CSAPR NO_X Ozone Season Group 2 Trading Program

■ 86. Amend § 97.802 by:

■ a. Revising the definition of ''allowance transfer deadline'',

■ b. In the definition of ''common designated representative'', removing ''such control period, the same'' and adding in its place ''such a control period before 2023, or as of July 1 immediately after such deadline for such a control period in 2023 or thereafter, the same'';

■ c. Revising the definitions of ''common designated representative's assurance level'' and ''common designated representative's share'';

■ d. In the definition of ''CSAPR NO_X Ozone Season Group 1 Trading Program'', removing ''(b)(3) through (5), and (b)(10) through (12)'' and adding in its place ''and (b)(3) through (5) and (14) through (16)'';

■ e. In the definition of ''CSAPR NO_X Ozone Season Group 2 Trading Program'', removing ''(b)(2)(i) and (iii), (b)(6) through (11), and (b)(13)'' and adding in its place ''(b)(2)(iii) and (iv), and (b)(6) through (9), (14), (15), and (17)'';

■ f. Adding in alphabetical order definitions for ''CSAPR NO_X Ozone Season Group 3 allowance'', ''CSAPR NO_X Ozone Season Group 3 Trading Program'', and ''nitrogen oxides''; and

■ g. In the definition of ''State'', removing ''(2)(i) and (iii), (6) through (11), and (13)'' and adding in its place ''(b)(2)(iii) and (iv), and (b)(6) through (9), (14), (15), and (17)''.

The revisions and additions read as follows:

§ 97.802 Definitions.

* * * * *

Allowance transfer deadline means, for a control period before 2023, midnight of March 1 immediately after such control period or, for a control period in 2023 or thereafter, midnight of June 1 immediately after such control period (or if such March 1 or June 1 is not a business day, midnight of the first business day thereafter) and is the deadline by which a CSAPR NO_X Ozone Season Group 2 allowance transfer must be submitted for recordation in a CSAPR NO_X Ozone Season Group 2 source's compliance account in order to be available for use in complying with the source's CSAPR NO_X Ozone Season Group 2 emissions limitation for such control period in accordance with §§ 97.806 and 97.824.

* * * * *

Common designated representative's assurance level means, with regard to a specific common designated representative and a State (and Indian country within the borders of such State) and control period in a given year for which the State assurance level is exceeded as described in § 97.806(c)(2)(iii):

(1) The amount (rounded to the nearest allowance) equal to the sum of the total amount of CSAPR NO_X Ozone Season Group 2 allowances allocated for such control period to a group of one or more base CSAPR NO_X Ozone Season Group 2 units located in such State (and such Indian country) and having the common designated representative for such control period and the total amount of CSAPR NO_X Ozone Season Group 2 allowances purchased by an owner or operator of such base CSAPR NO_X Ozone Season Group 2 units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance accounts for such base CSAPR NO_X Ozone Season Group 2 units in accordance with the CSAPR NO_X Ozone Season Group 2 allowance auction provisions in a SIP revision approved by the Administrator under § 52.38(b)(6), (8), or (9) of this chapter, multiplied by the sum of the State NO_X Ozone Season Group 2 trading budget under § 97.810(a) and the State's variability limit under § 97.810(b) for such control period and divided by the greater of such State NO_X Ozone Season Group 2 trading budget or the sum of all amounts of CSAPR NO_X Ozone Season Group 2 allowances for such control period treated for purposes of this definition as having been allocated to or purchased in the State's auction for all such base CSAPR NO_X Ozone Season Group 2 units;

(2) Provided that—

(i) For a control period before 2023 only, in the case of a base CSAPR NO_X Ozone Season Group 2 unit that operates during, but has no amount of CSAPR NO_X Ozone Season Group 2 allowances allocated under §§ 97.811 and 97.812 for, such control period, the unit shall be treated, solely for purposes of this definition, as being allocated an amount (rounded to the nearest allowance) of CSAPR NO_X Ozone Season Group 2 allowances for such control period equal to the unit's allowable NO_X emission rate applicable to such control period, multiplied by a capacity factor of 0.92 (if the unit is a boiler combusting any amount of coal or coal-derived fuel during such control period), 0.32 (if the unit is a simple cycle combustion turbine during such control period), 0.71 (if the unit is a combined cycle combustion turbine during such control period), 0.73 (if the unit is an integrated coal gasification combined cycle unit during such control period), or 0.44 (for any other unit), multiplied by the unit's maximum hourly load as reported in accordance with this subpart and by 3,672 hours/control period, and divided by 2,000 lb/ton;

(ii) The allocations of CSAPR NO_X Ozone Season Group 2 allowances for any control period taken into account for purposes of this definition exclude any CSAPR NO_X Ozone Season Group 2 allowances allocated for such control period under § 97.526(c)(1) or (3), or under § 97.526(c)(4) or (5) pursuant to an exception under § 97.526(c)(1) or (3); and

(iii) In the case of the base CSAPR NO_X Ozone Season Group 2 units at a base CSAPR NO_X Ozone Season Group 2 source in a State with regard to which CSAPR NO_X Ozone Season Group 2 allowances have been allocated under § 97.526(c)(2) for a given control period, the units at each such source will be treated, solely for purposes of this definition, as having been allocated under § 97.526(c)(2), or under § 97.526(c)(4) or (5) pursuant to an exception under § 97.526(c)(2), an amount of CSAPR NO_X Ozone Season Group 2 allowances for such control

period equal to the sum of the total amount of CSAPR NO_X Ozone Season Group 1 allowances allocated for such control period to such units and the total amount of CSAPR NO_X Ozone Season Group 1 allowances purchased by an owner or operator of such units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance account for such source in accordance with the CSAPR NO_X Ozone Season Group 1 allowance auction provisions in a SIP revision approved by the Administrator under § 52.38(b)(4) or (5) of this chapter, divided by the conversion factor determined under § 97.526(c)(2)(ii) with regard to the State's SIP revision under § 52.38(b)(6) of this chapter, and rounded up to the nearest whole allowance.

Common designated representative's share means, with regard to a specific common designated representative for a control period in a given year and a total amount of NO_X emissions from all base CSAPR NO_X Ozone Season Group 2 units in a State (and Indian country within the borders of such State) during such control period, the total tonnage of NO_X emissions during such control period from the group of one or more base CSAPR NO_X Ozone Season Group 2 units located in such State (and such Indian country) and having the common designated representative for such control period.

* * * * *

CSAPR NO_X Ozone Season Group 3 allowance means a limited authorization issued and allocated or auctioned by the Administrator under subpart GGGGG of this part, § 97.526(c), or § 97.826(c), or by a State or permitting authority under a SIP revision approved by the Administrator under § 52.38(b)(10), (11), (12), or (13) of this chapter, to emit one ton of NO_X during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR NO_X Ozone Season Group 3 Trading Program.

CSAPR NO_X Ozone Season Group 3 Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with subpart GGGGG of this part and § 52.38(b)(1), (b)(2)(v), and (b)(10) through (15) and (18) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(11) or (12) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(10) or (13) of this chapter), as a means of mitigating interstate transport of ozone and NO_X.

* * * * *

Nitrogen oxides means all oxides of nitrogen except nitrous oxide (N_2O), reported on an equivalent molecular weight basis as nitrogen dioxide (NO_2).

* * * * *

§ 97.805 [Amended]

■ 87. In § 97.805, amend paragraph (b) by removing the subject heading.

■ 88. Amend § 97.811 by:

■ a. Redesignating paragraph (b)(1)(i) as paragraph (b)(1)(i)(A), removing ''By June 1, 2017 and June 1 of each year thereafter,'' and adding in its place ''By June 1 of each year from 2017 through 2022,'';

■ b. Adding paragraph (b)(1)(i)(B);

■ c. In paragraph (b)(1)(ii)(A), removing ''through (7) and (12) and'' and adding in its place ''through (7) and (12) for a control period before 2023, or § 97.812(a)(2) through (7), (10), and (12) for a control period in 2023 or thereafter, and'';

■ d. Revising paragraph (b)(1)(ii)(B);

■ e. In paragraph (b)(1)(iii), removing ''such control period'' and adding in its place ''a control period before 2023'';

■ f. In paragraph (b)(1)(v), removing ''of this section,'' and adding in its place ''of this section for a control period before 2023, or in paragraph (b)(1)(ii) of this section for a control period in 2023 or thereafter,'';

■ g. Redesignating paragraph (b)(2)(i) as paragraph (b)(2)(i)(A), removing ''By June 1, 20175 and June 1 of each year thereafter,'' and adding in its place ''By June 1 of each year from 2017 through 2022,'';

■ h. Adding paragraph (b)(2)(i)(B);

■ i. In paragraph (b)(2)(ii)(A), removing ''through (7) and (12) and'' and adding in its place ''through (7) and (12) for a control period before 2023, or § 97.812(b)(2) through (7), (10), and (12) for a control period in 2023 or thereafter, and'';

■ j. Revising paragraph (b)(2)(ii)(B);

■ k. In paragraph (b)(2)(iii), removing ''such control period'' and adding in its place ''a control period before 2023'';

■ l. In paragraph (b)(2)(v), removing ''of this section,'' and adding in its place ''of this section for a control period before 2023, or in paragraph (b)(2)(ii) of this section for a control period in 2023 or thereafter,'';

■ m. In paragraph (c)(5)(i)(A), adding ''(or a subsequent control period)'' before ''for the State'';

■ n. In paragraph (c)(5)(i)(B), adding ''(or a subsequent control period)'' before ''in accordance with such SIP revision'';

■ o. In paragraph (c)(5)(ii)(A), adding ''(or a subsequent control period)'' before the semicolon at the end of the paragraph;

■ p. In paragraph (c)(5)(ii)(B), adding ''(or a subsequent control period)'' before ''in accordance with such SIP revision'';

■ q. In paragraph (c)(5)(iii), adding ''(or a subsequent control period)'' before the period at the end of the paragraph; and

■ r. Adding paragraph (d).

The additions and revisions read as follows:

§ 97.811 Timing requirements for CSAPR NO_X Ozone Season Group 2 allowance allocations.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) By March 1, 2024 and March 1 of each year thereafter, the Administrator will calculate the CSAPR NO_X Ozone Season Group 2 allowance allocation to each CSAPR NO_X Ozone Season Group 2 unit in a State, in accordance with § 97.812(a)(2) through (7), (10), and (12), for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) * * *

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the applicable provisions referenced in paragraph (b)(1)(ii)(A) of this section. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(A) of this section for a control period before 2023, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(B) of this section for a control period in 2023 or thereafter, the Administrator will promulgate a notice of data availability of the calculations incorporating any adjustments that the Administrator determines to be necessary with regard to allocations under such applicable provisions and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(ii)(A) of this section.

* * * * *

(2) * * *

(i) * * *

(B) By March 1, 2024 and March 1 of each year thereafter, the Administrator will calculate the CSAPR NO_X Ozone Season Group 2 allowance allocation to each CSAPR NO_X Ozone Season Group 2 unit in a State, in accordance with § 97.812(b)(2) through (7), (10), and (12),

for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) * * *

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the applicable provisions referenced in paragraph (b)(2)(ii)(A) of this section. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(A) of this section for a control period before 2023, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(B) of this section for a control period in 2023 or thereafter, the Administrator will promulgate a notice of data availability of the calculations incorporating any adjustments that the Administrator determines to be necessary with regard to allocations under such applicable provisions and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(ii)(A) of this section.

* * * * *

(d) *Recall of CSAPR NO_X Ozone Season Group 2 allowances allocated for control periods after 2020.* Notwithstanding any other provision of this subpart, part 52 of this chapter, or any SIP revision approved under § 52.38(b) of this chapter, with regard to any CSAPR NO_X Ozone Season Group 2 allowances allocated to units or other entities located in a State listed in § 52.38(b)(2)(iv) of this chapter for a control period after 2020, whether such CSAPR NO_X Ozone Season Group 2 allowances were allocated pursuant to this subpart or a SIP revision approved under § 52.38(b) of this chapter—

(1) For each such CSAPR NO_X Ozone Season Group 2 allowance that was allocated for a given control period to any unit, including a unit subject to an exemption under § 97.805, and that was recorded in the compliance account for the source at which the unit is located before [DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], the Administrator will deduct from such compliance account a CSAPR NO_X Ozone Season Group 2 allowance allocated for the same control period. The owners and operators of the unit shall ensure that sufficient CSAPR NO_X Ozone Season Group 2 allowances allocated for the appropriate control periods are available in such compliance account for completion of the deductions not later than [DATE 90 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(2) For each such CSAPR NO_X Ozone Season Group 2 allowance that was allocated for a given control period to an entity other than a unit and that was recorded in a general account for the entity before [DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] the Administrator will deduct from such general account a CSAPR NO_X Ozone Season Group 2 allowance allocated for the same control period. The authorized account representative for the general account shall ensure that sufficient CSAPR NO_X Ozone Season Group 2 allowances allocated for the appropriate control periods are available in such general account for completion of the deductions not later than [DATE 90 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(3) The Administrator will record in the appropriate Allowance Management System accounts all deductions of CSAPR NO_X Ozone Season Group 2 allowances under paragraphs (d)(1) and (2) of this section.

(4) With respect to any CSAPR NO_X Ozone Season Group 2 allowances for a given control period that the owners and operators of a unit fail to hold in the compliance account for the source at which the unit is located by the applicable deadline in accordance with paragraph (d)(1) of this section, or that the authorized account representative for a general account fails to hold in such general account by the applicable deadline in accordance with paragraph (d)(2) of this section, each such CSAPR NO_X Ozone Season Group 2 allowance, and each day in such control period, shall constitute a separate violation of this subpart and the Clean Air Act.

■ 89. Amend § 97.812 by:

■ a. Adding a subject heading to paragraph (a) introductory text;

■ b. In paragraph (a)(1)(i), removing ''§ 97.811(a)(1);'' and adding in its place ''§ 97.811(a)(1) and that have deadlines for certification of monitoring systems under § 97.830(b) not later than September 30 of the year of the control period;'';

■ c. In paragraph (a)(1)(iii), removing ''control period; or'' and adding in its place ''control period, for a control period before 2023, or that operate during such control period, for a control period in 2023 or thereafter; or'';

■ d. In paragraph (a)(3) introductory text, removing ''later'' and adding in its place ''latest'';

■ e. Revising paragraphs (a)(3)(ii) and (iv);

■ f. In paragraph (a)(4)(i), removing ''preceding control period.'' and adding in its place ''preceding control period, for a control period before 2023, or the unit's total tons of NO_X emissions during the control period, for a control period in 2023 or thereafter.'';

■ g. In paragraph (a)(5), adding ''allocation amounts of'' after ''sum of the'';

■ h. In paragraph (a)(8), removing ''The Administrator'' and adding in its place ''For a control period before 2023 only, the Administrator'';

■ i. In paragraph (a)(9) introductory text, removing ''If, after completion'' and adding in its place ''For a control period before 2023 only, if, after completion'';

■ j. In paragraph (a)(10), removing ''for such control period, any unallocated'' and adding in its place ''for a control period before 2023, or under paragraphs (a)(2) through (7) and (12) of this section for a control period in 2023 or thereafter, any unallocated'';

■ k. Redesignating paragraph (a)(11) as paragraph (a)(11)(i), removing ''The Administrator'' and adding in its place ''For a control period before 2023, the Administrator'';

■ l. Adding paragraph (a)(11)(ii);

■ m. Revising paragraph (a)(12);

■ n. Adding a subject heading to paragraph (b) introductory text;

■ o. In paragraph (b)(1)(i), removing ''§ 97.811(a)(1); or'' and adding in its place ''§ 97.811(a)(1) and that have deadlines for certification of monitoring systems under § 97.830(b) not later than September 30 of the year of the control period; or'';

■ p. Revising paragraph (b)(3)(ii);

■ q. In paragraph (b)(4)(i), removing ''preceding control period.'' and adding in its place ''preceding control period, for a control period before 2023, or the unit's total tons of NO_X emissions during the control period, for a control period in 2023 or thereafter.'';

■ r. In paragraph (b)(5), adding ''allocation amounts of'' after ''sum of the'';

■ s. In paragraph (b)(8), removing ''The Administrator'' and adding in its place ''For a control period before 2023 only, the Administrator'';

■ t. In paragraph (b)(9) introductory text, removing ''If, after completion'' and adding in its place ''For a control period before 2023 only, if, after completion'';

■ u. In paragraph (b)(10) introductory text, removing ''for such control period, any unallocated'' and adding in its place ''for a control period before 2023, or under paragraphs (b)(2) through (7) and (12) of this section for a control period in 2023 or thereafter, any unallocated'';

■ v. Redesignating paragraph (b)(11) as paragraph (b)(11)(i), removing ''The

Administrator'' and adding in its place ''For a control period before 2023, the Administrator'';

■ w. Adding paragraph (b)(11)(ii); and

■ x. Revising paragraph (b)(12).

The additions and revisions read as follows:

§ 97.812 CSAPR NO_X Ozone Season Group 2 allowance allocations to new units.

(a) *Allocations from new unit set-asides.* * * *

* * * * *

(3) * * *

(ii) The first control period after the control period containing the deadline for certification of the CSAPR NO_X Ozone Season Group 2 unit's monitoring systems under § 97.830(b), for allocations for a control period before 2023, or the control period containing such deadline, for allocations for a control period in 2023 or thereafter;

* * * * *

(iv) For a unit described in paragraph (a)(1)(iii) of this section, the first control period after the control period in which the unit resumes operation, for allocations for a control period before 2023, or the control period in which the unit resumes operation, for allocations for a control period in 2023 or thereafter.

* * * * *

(11) * * *

(ii) For a control period in 2023 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.811(b)(1)(i), (ii), and (v), of the amount of CSAPR NO_X Ozone Season Group 2 allowances allocated under paragraphs (a)(2) through (7), (10), and (12) of this section for such control period to each CSAPR NO_X Ozone Season Group 2 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (a)(2) through (11) of this section, if the calculations of allocations from a new unit set-aside for a control period before 2023 under paragraph (a)(7) of this section, paragraphs (a)(6) and (a)(9)(iv) of this section, or paragraphs (a)(6), (a)(9)(iii), and (a)(10) of this section, or for a control period in 2023 or thereafter under paragraph (a)(7) of this section or paragraphs (a)(6) and (10) of this section, would otherwise result in total allocations from such new unit set-aside unequal to the total amount of such new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR NO_X Ozone Season Group 2 units in descending order based on such units' allocation amounts under paragraph (a)(7), (a)(9)(iv), or (a)(10) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR NO_X Ozone Season Group 2 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such new unit set-aside equal the total amount of such new unit set-aside.

(b) *Allocations from Indian country new unit set-asides.* * * *

* * * * *

(3) * * *

(ii) The first control period after the control period containing the deadline for certification of the CSAPR NO_X Ozone Season Group 2 unit's monitoring systems under § 97.830(b), for allocations for a control period before 2023, or the control period containing such deadline, for allocations for a control period in 2023 or thereafter.

* * * * *

(11) * * *

(ii) For a control period in 2023 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.811(b)(2)(i), (ii), and (v), of the amount of CSAPR NO_X Ozone Season Group 2 allowances allocated under paragraphs (b)(2) through (7), (10), and (12) of this section for such control period to each CSAPR NO_X Ozone Season Group 2 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (b)(2) through (11) of this section, if the calculations of allocations from an Indian country new unit set-aside for a control period before 2023 under paragraph (b)(7) of this section or paragraphs (b)(6) and (b)(9)(iv) of this section, or for a control period in 2023 or thereafter under paragraph (b)(7) of this section, would otherwise result in total allocations from such Indian country new unit set-aside unequal to the total amount of such Indian country new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR NO_X Ozone Season Group 2 units in descending order based on such units' allocation amounts under paragraph (b)(7) or (b)(9)(iv) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR NO_X Ozone Season Group 2 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such Indian country new unit set-aside equal the total amount of such Indian country new unit set-aside.

§ 97.820 [Amended]

■ 90. In § 97.820, amend paragraph (c)(3)(iii)(B) by removing ''to NO_X'' and adding in its place ''to CSAPR NO_X''.

■ 91. Amend § 97.821 by:

■ a. In paragraph (f), removing ''By July 1, 2021'' and adding in its place ''By July 1, 2022'', and removing ''in the fourth year'' and adding in its place ''in the third year'';

■ b. Redesignating paragraph (g) as paragraph (g)(1), removing ''By August 1, 2017 and August 1 of each year thereafter,'' and adding in its place ''By August 1 of each year from 2017 through 2022,'';

■ c. Adding paragraph (g)(2);

■ d. Redesignating paragraph (h) as paragraph (h)(1), removing ''By August 1, 2017 and August 1 of each year thereafter,'' and adding in its place ''By August 1 of each year from 2017 through 2022,'';

■ e. Adding paragraph (h)(2); and

■ f. In paragraphs (i) and (j), removing ''By February 15, 2018 and February 15 of each year thereafter,'' and adding in its place ''By February 15 of each year from 2018 through 2023.''

The additions read as follows:

§ 97.821 Recordation of CSAPR NO_X Ozone Season Group 2 allowance allocations and auction results.

* * * * *

(g) * * *

(2) By May 1, 2024 and May 1 of each year thereafter, the Administrator will record in each CSAPR NO_X Ozone Season Group 2 source's compliance account the CSAPR NO_X Ozone Season Group 2 allowances allocated to the CSAPR NO_X Ozone Season Group 2 units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Ozone Season Group 2 allowances auctioned to CSAPR NO_X Ozone Season Group 2 units, in accordance with § 97.812(a)(2) through (12), or with a SIP revision approved under § 52.38(b)(6), (8), or (9) of this chapter, for the control period in

the year before the year of the applicable recordation deadline under this paragraph.

(h) * * *

(2) By May 1, 2024 and May 1 of each year thereafter, the Administrator will record in each CSAPR NO_X Ozone Season Group 2 source's compliance account the CSAPR NO_X Ozone Season Group 2 allowances allocated to the CSAPR NO_X Ozone Season Group 2 units at the source in accordance with § 97.812(b)(2) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

* * * * *

■ 92. Amend § 97.824 by adding a paragraph (c) subject heading and revising paragraph (c)(1) to read as follows:

§ 97.824 Compliance with CSAPR NO_X Ozone Season Group 2 emissions limitation.

* * * * *

(c) *Selection of CSAPR NO_X Ozone Season Group 2 allowances for deduction*—(1) *Identification by serial number.* The designated representative for a source may request that specific CSAPR NO_X Ozone Season Group 2 allowances, identified by serial number, in the source's compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the CSAPR NO_X Ozone Season Group 2 source and the appropriate serial numbers.

* * * * *

■ 93. Amend § 97.825 by:

■ a. Revising paragraphs (b)(1) introductory text and (b)(1)(ii);

■ b. In paragraph (b)(2)(i), removing ''By July 1'' and adding in its place ''For a control period before 2023 only, by July 1'';

■ c. Revising paragraphs (b)(2)(ii), (b)(2)(iii) introductory text, and (b)(2)(iii)(A);

■ d. In paragraph (b)(2)(iii)(B), removing ''such notice,'' and adding in its place ''such notice or notices,''; and

■ e. In paragraph (b)(6)(ii), removing ''If any such data'' and adding in its place ''For a control period before 2023 only, if any such data.''

The revisions read as follows:

§ 97.825 Compliance with CSAPR NO_X Ozone Season Group 2 assurance provisions.

* * * * *

(b) * * *

(1) By June 1 of each year from 2018 through 2023 and by August 1 of each year thereafter, the Administrator will:

* * * * *

(ii) If the calculations under paragraph (b)(1)(i) of this section indicate that the total NO_X emissions from all CSAPR NO_X Ozone Season Group 2 units at CSAPR NO_X Ozone Season Group 2 sources in any State (and Indian country within the borders of such State) during such control period exceed the State assurance level for such control period, promulgate a notice of data availability of the results of the calculations required in paragraph (b)(1)(i) of this section, including separate calculations of the NO_X emissions from each base CSAPR NO_X Ozone Season Group 2 source.

(2) * * *

(ii) The Administrator will calculate, for each such State (and Indian country within the borders of such State) and such control period and each common designated representative for such control period for a group of one or more base CSAPR NO_X Ozone Season Group 2 sources and units in the State (and Indian country within the borders of such State), the common designated representative's share of the total NO_X emissions from all base CSAPR NO_X Ozone Season Group 2 units at base CSAPR NO_X Ozone Season Group 2 sources in the State (and Indian country within the borders of such State), the common designated representative's assurance level, and the amount (if any) of CSAPR NO_X Ozone Season Group 2 allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in § 97.806(c)(2)(i). For a control period before 2023, if the results of these calculations were not included in the notice of data availability required in paragraph (b)(1)(ii) of this section, the Administrator will promulgate a notice of data availability of the results of these calculations by August 1 immediately after the promulgation of such notice. For a control period in 2023 or thereafter, the Administrator will include the results of these calculations in the notice of data availability required in paragraph (b)(1)(ii) of this section.

(iii) The Administrator will provide an opportunity for submission of objections to the calculations referenced by the notice or notices of data availability required in paragraphs (b)(1)(ii) and (b)(2)(ii) of this section.

(A) Objections shall be submitted by the deadline specified in such notice or notices and shall be limited to addressing whether the calculations referenced in the notice or notices are in accordance with § 97.806(c)(2)(iii), §§ 97.806(b), and 97.830 through 97.835, the definitions of ''common designated representative'', ''common designated representative's assurance level'', and ''common designated representative's share'' in § 97.802, and the calculation formula in § 97.806(c)(2)(i).

* * * * *

■ 94. Amend § 97.826 by revising the section heading and paragraph (b) and adding paragraph (c) to read as follows:

§ 97.826 Banking and conversion.

* * * * *

(b) Any CSAPR NO_X Ozone Season Group 2 allowance that is held in a compliance account or a general account will remain in such account unless and until the CSAPR NO_X Ozone Season Group 2 allowance is deducted or transferred under § 97.811(c) or (d), § 97.823, § 97.824, § 97.825, § 97.827, or § 97.828 or removed under paragraph (c) of this section.

(c) Notwithstanding any other provision of this subpart, part 52 of this chapter, or any SIP revision approved under § 52.38(b)(6), (8), or (9) of this chapter, the Administrator will remove CSAPR NO_X Ozone Season Group 2 allowances from compliance accounts and general accounts and allocate in their place amounts of CSAPR NO_X Ozone Season Group 3 allowances as provided in paragraphs (c)(1) through (5) of this section and will record CSAPR NO_X Ozone Season Group 3 allowances in lieu of initially recording CSAPR NO_X Ozone Season Group 2 allowances as provided in paragraph (c)(6) of this section.

(1) By [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], the Administrator will temporarily suspend acceptance of CSAPR NO_X Ozone Season Group 2 allowance transfers submitted under § 97.822 and, before resuming acceptance of such transfers, will take the following actions with regard to every general account and every compliance account except a compliance account for a CSAPR NO_X Ozone Season Group 2 source located in a State listed in § 52.38(b)(2)(iii) of this chapter or Indian country within the borders of such a State, subject to the prior opportunity for temporary modifications of the holdings of each general account as described in paragraph (c)(1)(iv) of this section:

(i) The Administrator will remove all CSAPR NO_X Ozone Season Group 2 allowances allocated for the control

periods in 2017, 2018, 2019, and 2020 from each such account.

(ii) The Administrator will determine a conversion factor equal to the greater of 1.0000 or the quotient, expressed to four decimal places, of the sum of all CSAPR NO_X Ozone Season Group 2 allowances removed from all such accounts under paragraph (c)(1)(i) of this section divided by the product of the sum of the variability limits for the control period in 2022 set forth in § 97.1010(b) for all States listed in § 52.38(b)(2)(v) of this chapter multiplied by a fraction whose numerator is the number of days from [DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] through September 30, 2021, inclusive, and whose denominator is 153.

(iii) The Administrator will allocate to and record in each such account an amount of CSAPR NO_X Ozone Season Group 3 allowances for the control period in 2021, where such amount is determined as the quotient of the number of CSAPR NO_X Ozone Season Group 2 allowances removed from such account under paragraph (c)(1)(i) of this section divided by the conversion factor determined under paragraph (c)(1)(ii) of this section, rounded up to the nearest whole allowance, except as provided in paragraphs (c)(4) and (5) of this section.

(iv) The authorized account representative for a general account may elect to prevent the application of the provisions of paragraphs (c)(1)(i) through (iii) of this section to any or all CSAPR NO_X Ozone Season Group 2 allowances held in such general account as follows:

(A) Not less than 30 days before taking the action described in paragraph (c)(1)(i) of this section, the Administrator will establish a reserve account for the sole purpose of temporarily holding CSAPR NO_X Ozone Season Group 2 allowances that will not be subject to the provisions of paragraphs (c)(1)(i) through (iii) of this section.

(B) The authorized account representative for any general account may transfer any or all CSAPR NO_X Ozone Season Group 2 allowances held in such general account to the reserve account, provided that each such transfer must be submitted not less than 7 days before the action described in paragraph (c)(1)(i) of this section. CSAPR NO_X Ozone Season Group 2 allowances held in a compliance account may not be transferred directly to the reserve account but may be transferred to a general account and then transferred from the general account to the reserve account, subject to the deadline under this paragraph for submission of the transfer to the reserve account.

(C) Not more than 7 days after completion of the action described in paragraph (c)(1)(iii) of this section, the Administrator will transfer all CSAPR NO_X Ozone Season Group 2 allowances held in the reserve account back to the general accounts from which such CSAPR NO_X Ozone Season Group 2 allowances were transferred to the reserve account.

(2) As soon as practicable after approval of a SIP revision under § 52.38(b)(10) of this chapter for a State listed in § 52.38(b)(2)(iii) of this chapter (or a State listed in § 52.38(b)(2)(i) of this chapter for which a SIP revision under § 52.38(b)(6) of this chapter was previously approved), but not later than the allowance transfer deadline defined under § 97.1002 for the initial control period described with regard to such SIP revision in § 52.38(b)(10)(ii)(A) of this chapter, the Administrator will temporarily suspend acceptance of CSAPR NO_X Ozone Season Group 2 allowance transfers submitted under § 97.822 and, before resuming acceptance of such transfers, will take the following actions with regard to every general account and every compliance account, unless otherwise provided in such approval of the SIP revision:

(i) The Administrator will remove from each such account all CSAPR NO_X Ozone Season Group 2 allowances for such initial control period and each subsequent control period that were allocated to units located in such State under this subpart or § 97.526(c)(2) or that were allocated or auctioned to any entity under a SIP revision for such State approved by the Administrator under § 52.38(b)(6), (8), or (9) of this chapter, whether such CSAPR NO_X Ozone Season Group 2 allowances were initially recorded in such account or were transferred to such account from another account.

(ii) The Administrator will determine a conversion factor equal to the greater of 1.0000 or the quotient, expressed to four decimal places, of the NO_X Ozone Season Group 2 trading budget set forth for such State in § 97.810(a) divided by the NO_X Ozone Season Group 3 trading budget set forth for such State in § 97.1010(a).

(iii) The Administrator will allocate to and record in each such account an amount of CSAPR NO_X Ozone Season Group 3 allowances for each control period for which CSAPR NO_X Ozone Season Group 2 allowances were removed from such account, where each such amount is determined as the quotient of the number of CSAPR NO_X Ozone Season Group 2 allowances for such control period removed from such account under paragraph (c)(2)(i) of this section divided by the conversion factor determined under paragraph (c)(2)(ii) of this section, rounded up to the nearest whole allowance, except as provided in paragraphs (c)(4) and (5) of this section.

(3) As soon as practicable after approval of a SIP revision under § 52.38(b)(10) of this chapter for a State listed in § 52.38(b)(2)(iii) of this chapter (or a State listed in § 52.38(b)(2)(i) of this chapter for which a SIP revision under § 52.38(b)(6) of this chapter was previously approved), but not before the completion of deductions under § 97.824 for the control period before the initial control period described with regard to such SIP revision in § 52.38(b)(10)(ii)(A) of this chapter and not later than the allowance transfer deadline defined under § 97.1002 for such initial control period, the Administrator will temporarily suspend acceptance of CSAPR NO_X Ozone Season Group 2 allowance transfers submitted under § 97.822 and, before resuming acceptance of such transfers, will take the following actions with regard to every compliance account for a CSAPR NO_X Ozone Season Group 2 source located in such State, provided that if the provisions of § 52.38(b)(2)(iii) of this chapter or a SIP revision approved under § 52.38(b)(6) or (9) of this chapter will no longer apply to any source in any State or Indian country within the borders of any State with regard to emissions occurring in such initial control period or any subsequent control period, the Administrator instead will permanently end acceptance of CSAPR NO_X Ozone Season Group 2 allowance transfers submitted under § 97.822 and will take the following actions with regard to every general account and every compliance account:

(i) The Administrator will remove from each such account all CSAPR NO_X Ozone Season Group 2 allowances allocated for all control periods before such initial control period.

(ii) The Administrator will determine a conversion factor equal to the greater of 1.0000 or the quotient, expressed to four decimal places, of the sum of all CSAPR NO_X Ozone Season Group 2 allowances removed from all such accounts under paragraph (c)(3)(i) of this section divided by the variability limit for such initial control period set forth for such State in § 97.1010(b).

(iii) The Administrator will allocate to and record in each such account an amount of CSAPR NO_X Ozone Season Group 3 allowances for such initial

control period, where such amount is determined as the quotient of the number of CSAPR NO_X Ozone Season Group 2 allowances removed from such account under paragraph (c)(3)(i) of this section divided by the conversion factor determined under paragraph (c)(3)(ii) of this section, rounded up to the nearest whole allowance, except as provided in paragraphs (c)(4) and (5) of this section.

(4)(i) Where, pursuant to paragraph (c)(1)(i), (c)(2)(i), or (c)(3)(i) of this section, the Administrator removes CSAPR NO_X Ozone Season Group 2 allowances from the compliance account for a source located in a State that is not listed in § 52.38(b)(2)(v) of this chapter and for which no SIP revision has been approved under § 52.38(b)(10) of this chapter, or Indian country within the borders of such a State, the Administrator will not record CSAPR NO_X Ozone Season Group 3 allowances in that compliance account but instead will allocate to and record in a general account CSAPR NO_X Ozone Season Group 3 allowances for the control periods and in the amounts determined in accordance with paragraph (c)(1)(iii), (c)(2)(iii), or (c)(3)(iii) of this section, respectively, provided that the designated representative for such source identifies such general account in a submission to the Administrator within 180 days after the date on which the Administrator removes CSAPR NO_X Ozone Season Group 2 allowances from the source's compliance account under paragraph (c)(1)(i), (c)(2)(i), or (c)(3)(i) of this section.

(ii) If the designated representative for a source described in paragraph (c)(4)(i) of this section does not make a submission identifying a general account for recordation of CSAPR NO_X Ozone Season Group 3 allowances within 180 days after the date on which the Administrator removes CSAPR NO_X Ozone Season Group 2 allowances from the source's compliance account under paragraph (c)(1)(i), (c)(2)(i), or (c)(3)(i) of this section, the Administrator will transfer the CSAPR NO_X Ozone Season Group 3 allowances to a surrender account. A submission by the designated representative under paragraph (c)(4)(i) of this section after such a transfer has taken place shall have no effect.

(5)(i) In computing any amounts of CSAPR NO_X Ozone Season Group 3 allowances to be allocated to and recorded in general accounts under paragraph (c)(1)(iii), (c)(2)(iii), or (c)(3)(iii) of this section, the Administrator may group multiple general accounts whose ownership interests are held by the same or related persons or entities and treat the group of accounts as a single account for purposes of such computation.

(ii) Following a computation for a group of general accounts in accordance with paragraph (c)(5)(i) of this section, the Administrator will allocate to and record in each individual account in such group a proportional share of the quantity of CSAPR NO_X Ozone Season Group 3 allowances computed for such group, basing such shares on the respective quantities of CSAPR NO_X Ozone Season Group 2 allowances removed from such individual accounts under paragraph (c)(1)(i), (c)(2)(i), or (c)(3)(i) of this section, as applicable.

(iii) In determining the proportional shares under paragraph (c)(5)(ii) of this section, the Administrator may employ any reasonable adjustment methodology to truncate or round each such share up or down to a whole number and to cause the total of such whole numbers to equal the amount of CSAPR NO_X Ozone Season Group 3 allowances computed for such group of accounts in accordance with paragraph (c)(5)(i) of this section, even where such adjustments cause the numbers of CSAPR NO_X Ozone Season Group 3 allowances allocated to some individual accounts to equal zero.

(6) After the Administrator has carried out the procedures set forth in paragraph (c)(1), (2), or (3) of this section, upon any determination that would otherwise result in the initial recordation of any CSAPR NO_X Ozone Season Group 2 allowances in any account, where if such allowances had been recorded before the Administrator had carried out such procedures the allowances would have been removed from such account under paragraph (c)(1)(i), (c)(2)(i), or (c)(3)(i) of this section, respectively, the Administrator will not record such CSAPR NO_X Ozone Season Group 2 allowances but instead will record CSAPR NO_X Ozone Season Group 3 allowances for the control periods and in the amounts determined in accordance with paragraph (c)(1)(iii), (c)(2)(iii), or (c)(3)(iii) of this section, respectively, in such account or another account identified in accordance with paragraph (c)(4) of this section.

(7) Notwithstanding any other provision of this subpart or subpart GGGGG of this part, CSAPR NO_X Ozone Season Group 3 allowances may be used to satisfy requirements to hold CSAPR NO_X Ozone Season Group 2 allowances under this subpart as follows, provided that nothing in this paragraph alters the time as of which any such allowance holding requirement must be met or limits any consequence of a failure to timely meet any such allowance holding requirement:

(i) After the Administrator has carried out the procedures set forth in paragraph (c)(1) of this section, the owner or operator of a CSAPR NO_X Ozone Season Group 2 unit in a State listed in § 52.38(b)(2)(v) of this chapter or Indian country within the borders of such a State may satisfy a requirement to hold a given number of CSAPR NO_X Ozone Season Group 2 allowances for the control period in 2017, 2018, 2019, or 2020 by holding instead, in a general account established for this sole purpose, an amount of CSAPR NO_X Ozone Season Group 3 allowances for the control period in 2021, where such amount of CSAPR NO_X Ozone Season Group 3 allowances is computed as the quotient of such given number of CSAPR NO_X Ozone Season Group 2 allowances divided by the conversion factor determined under paragraph (c)(1)(ii) of this section, rounded up to the nearest whole allowance.

(ii) After the Administrator has carried out the procedures set forth in paragraph (c)(3) of this section, the owner or operator of a CSAPR NO_X Ozone Season Group 2 unit in a State listed in § 52.38(b)(2)(iii) of this chapter (or a State listed in § 52.38(b)(2)(i) of this chapter for which a SIP revision under § 52.38(b)(6) of this chapter was previously approved) may satisfy a requirement to hold a given number of CSAPR NO_X Ozone Season Group 2 allowances for a control period before the initial control period described with regard to the State's SIP revision in § 52.38(b)(10)(ii)(A) of this chapter by holding instead, in a general account established for this sole purpose, an amount of CSAPR NO_X Ozone Season Group 3 allowances for such initial control period or any previous control period, where such amount of CSAPR NO_X Ozone Season Group 3 allowances is computed as the quotient of such given number of CSAPR NO_X Ozone Season Group 2 allowances divided by the conversion factor determined under paragraph (c)(3)(ii) of this section, rounded up to the nearest whole allowance.

§ 97.831 [Amended]

■ 95. In § 97.831, amend paragraph (d)(3) introductory text by removing in the last sentence ''with'' after ''is replaced by''.

Subpart FFFFF—Texas SO_2 Trading Program

■ 96. Amend § 97.902 by:

■ a. Revising the definition of ''allowance transfer deadline'';

■ b. In the definition of ''alternate designated representative'', removing ''Program or CSAPR NO_X Ozone Season Group 2 Trading Program,'' and adding in its place ''Program, CSAPR NO_X Ozone Season Group 2 Trading Program, or CSAPR NO_X Ozone Season Group 3 Trading Program,'';
■ c. In the definition of ''common designated representative'', removing ''such control period, the same'' and adding in its place ''such a control period before 2023, or as of July 1 immediately after such deadline for such a control period in 2023 or thereafter, the same'';
■ d. In the definition of ''CSAPR NO_X Ozone Season Group 2 Trading Program'', removing ''(b)(2)(i) and (iii), (b)(6) through (11), and (b)(13)'' and adding in its place ''(b)(2)(iii) and (iv), and (b)(6) through (9), (14), (15), and (17)'';
■ e. Adding in alphabetical order a definition for ''CSAPR NO_X Ozone Season Group 3 Trading Program'';
■ f. In the definition of ''designated representative'', removing ''Program or CSAPR NO_X Ozone Season Group 2 Trading Program,'' and adding in its place ''Program, CSAPR NO_X Ozone Season Group 2 Trading Program, or CSAPR NO_X Ozone Season Group 3 Trading Program,''; and
■ g. Adding in alphabetical order a definition for ''nitrogen oxides''.

The revision and additions read as follows:

§ 97.902 Definitions.

* * * * *

Allowance transfer deadline means, for a control period before 2023, midnight of March 1 immediately after such control period or, for a control period in 2023 or thereafter, midnight of June 1 immediately after such control period (or if such March 1 or June 1 is not a business day, midnight of the first business day thereafter) and is the deadline by which a Texas SO_2 Trading Program allowance transfer must be submitted for recordation in a Texas SO_2 Trading Program source's compliance account in order to be available for use in complying with the source's Texas SO_2 Trading Program emissions limitation for such control period in accordance with §§ 97.906 and 97.924.

* * * * *

CSAPR NO_X Ozone Season Group 3 Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with subpart GGGGG of this part and § 52.38(b)(1), (b)(2)(v), and (b)(10) through (15) and (18) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(11) or (12) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(10) or (13) of this chapter), as a means of mitigating interstate transport of ozone and NO_X.

* * * * *

Nitrogen oxides means all oxides of nitrogen except nitrous oxide (N_2O), reported on an equivalent molecular weight basis as nitrogen dioxide (NO_2).

* * * * *

§ 97.905 [Amended]

■ 97. In § 97.905, amend paragraph (b) by removing the subject heading.
■ 98. Amend § 97.911 by:
■ a. Adding a paragraph (a) subject heading; and
■ b. In Table 1 to paragraph (a)(1), capitalizing ''Trading Program'' each time it appears, removing the extra period at the end of the table entry for ''Big Brown Unit 1'', and removing ''Vistra Energy.'' and adding in its place ''Vistra.'' each time it appears.

The addition reads as follows:

§ 97.911 Texas SO_2 Trading Program allowance allocations.

(a) *Allocations from the Texas SO_2 Trading Program budget.* * * *

* * * * *

§ 97.912 [Amended]

■ 99. Amend § 97.912 by:
■ a. In paragraph (a)(3)(i), removing ''paragraph (b)'' and adding in its place ''paragraph (d)''; and
■ b. In paragraph (b)(2), removing ''February 15, 2022 and each subsequent February 15,'' and adding in its place ''February 15 of 2022 and 2023 and May 1 of each year thereafter,''.

§ 97.920 [Amended]

■ 100. In § 97.920, amend paragraph (d) by removing ''paragraphs (a), (b), and (c)'' and adding in its place ''paragraph (a), (b), or (c)''.
■ 101. Amend § 97.921 by:
■ a. Redesignating paragraph (b) as paragraph (b)(1), removing ''By July 1, 2019,'' and adding in its place ''By July 1, 2019 and July 1, 2020,'';
■ b. Adding paragraph (b)(2); and
■ c. Revising paragraph (c).

The addition and revision read as follows:

§ 97.921 Recordation of Texas SO_2 Trading Program allowance allocations.

* * * * *

(b) * * *

(2) By July 1, 2022 and July 1 of each year thereafter, the Administrator will record in each Texas SO_2 Trading Program source's compliance account the Texas SO_2 Trading Program allowances allocated to the Texas SO_2 Trading Program units at the source in accordance with § 97.911(a) for the control period in the third year after the year of the applicable recordation deadline under this paragraph, unless provided otherwise in the Administrator's approval of a SIP revision replacing the provisions of this subpart.

(c) By February 15 of each year from 2020 through 2023 and by May 1 of each year thereafter, the Administrator will record in each Texas SO_2 Trading Program source's compliance account the allowances allocated from the Texas SO_2 Trading Program Supplemental Allowance Pool in accordance with § 97.912 for the control period in the year before the year of the applicable recordation deadline under this paragraph, unless provided otherwise in the Administrator's approval of a SIP revision replacing the provisions of this subpart.

* * * * *

■ 102. Amend § 97.924 by adding a paragraph (c) subject heading and revising paragraph (c)(1) to read as follows:

§ 97.924 Compliance with Texas SO_2 Trading Program emissions limitations.

* * * * *

(c) *Selection of Texas SO_2 Trading Program allowances for deduction*—(1) *Identification by serial number.* The designated representative for a source may request that specific Texas SO_2 Trading Program allowances, identified by serial number, in the source's compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the Texas SO_2 Trading Program source and the appropriate serial numbers.

* * * * *

■ 103. Amend § 97.925 by:
■ a. Revising paragraph (b)(1) introductory text; and
■ b. In paragraph (b)(2)(ii), removing in the first sentence ''this section, the Administrator'' and adding in its place ''this section for a control period before 2023, or by the August 1 deadline for such calculations for a control period in 2023 or thereafter, the Administrator''.

The revision reads as follows:

§ 97.925 Compliance with Texas SO_2 Trading Program assurance provisions.

* * * * *

(b) * * *

(1) By June 1 of 2022 and 2023 and by August 1 of each year thereafter, the Administrator will:

* * * * *

§ 97.934 [Amended]

■ 104. In § 97.934, amend paragraph (d)(3) by removing ''Program or CSAPR NO_X Ozone Season Group 2 Trading Program,'' and adding in its place ''Program, CSAPR NO_X Ozone Season Group 2 Trading Program, or CSAPR NO_X Ozone Season Group 3 Trading Program,''.

■ 105. Add subpart GGGGG, consisting of §§ 97.1001 through 97.1035, to read as follows:

Subpart GGGGG—CSAPR NO_X Ozone Season Group 3 Trading Program

Sec.

Subpart GGGGG—CSAPR NO_X Ozone Season Group 3 Trading Program

§ 97.1001 Purpose.

This subpart sets forth the general, designated representative, allowance, and monitoring provisions for the Cross-State Air Pollution Rule (CSAPR) NO_X Ozone Season Group 3 Trading Program, under section 110 of the Clean Air Act and § 52.38 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

§ 97.1002 Definitions.

The terms used in this subpart shall have the meanings set forth in this section as follows, provided that any term that includes the acronym ''CSAPR'' shall be considered synonymous with a term that is used in a SIP revision approved by the Administrator under § 52.38 or § 52.39 of this chapter and that is substantively identical except for the inclusion of the acronym ''TR'' in place of the acronym ''CSAPR'':

Acid Rain Program means a multi-state SO_2 and NO_X air pollution control and emission reduction program established by the Administrator under title IV of the Clean Air Act and parts 72 through 78 of this chapter.

Administrator means the Administrator of the United States Environmental Protection Agency or the Director of the Clean Air Markets Division (or its successor determined by the Administrator) of the United States Environmental Protection Agency, the Administrator's duly authorized representative under this subpart.

Allocate or *allocation* means, with regard to CSAPR NO_X Ozone Season Group 3 allowances, the determination by the Administrator, State, or permitting authority, in accordance with this subpart, § 97.526(c), § 97.826(c), and any SIP revision submitted by the State and approved by the Administrator under § 52.38(b)(10), (11), (12), or (13) of this chapter, of the amount of such CSAPR NO_X Ozone Season Group 3 allowances to be initially credited, at no cost to the recipient, to:

(1) A CSAPR NO_X Ozone Season Group 3 unit;

(2) A new unit set-aside;

(3) An Indian country new unit set-aside; or

(4) An entity not listed in paragraphs (1) through (3) of this definition;

(5) Provided that, if the Administrator, State, or permitting authority initially credits, to a CSAPR NO_X Ozone Season Group 3 unit qualifying for an initial credit, a credit in the amount of zero CSAPR NO_X Ozone Season Group 3 allowances, the CSAPR NO_X Ozone Season Group 3 unit will be treated as being allocated an amount (*i.e.,* zero) of CSAPR NO_X Ozone Season Group 3 allowances.

Allowable NO_X emission rate means, for a unit, the most stringent State or federal NO_X emission rate limit (in lb/MWh or, if in lb/mmBtu, converted to lb/MWh by multiplying it by the unit's heat rate in mmBtu/MWh) that is applicable to the unit and covers the longest averaging period not exceeding one year.

Allowance Management System means the system by which the Administrator records allocations, auctions, transfers, and deductions of CSAPR NO_X Ozone Season Group 3 allowances under the CSAPR NO_X Ozone Season Group 3 Trading Program. Such allowances are allocated, auctioned, recorded, held, transferred, or deducted only as whole allowances.

Allowance Management System account means an account in the Allowance Management System established by the Administrator for purposes of recording the allocation, auction, holding, transfer, or deduction of CSAPR NO_X Ozone Season Group 3 allowances.

Allowance transfer deadline means, for a control period before 2023, midnight of March 1 immediately after such control period or, for a control period in 2023 or thereafter, midnight of June 1 immediately after such control period (or if such March 1 or June 1 is not a business day, midnight of the first business day thereafter) and is the deadline by which a CSAPR NO_X Ozone Season Group 3 allowance transfer must be submitted for recordation in a CSAPR NO_X Ozone Season Group 3 source's compliance account in order to be available for use in complying with the source's CSAPR NO_X Ozone Season Group 3 emissions limitation for such

control period in accordance with §§ 97.1006 and 97.1024.

Alternate designated representative means, for a CSAPR NO_X Ozone Season Group 3 source and each CSAPR NO_X Ozone Season Group 3 unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with this subpart, to act on behalf of the designated representative in matters pertaining to the CSAPR NO_X Ozone Season Group 3 Trading Program. If the CSAPR NO_X Ozone Season Group 3 source is also subject to the Acid Rain Program, CSAPR NO_X Annual Trading Program, CSAPR SO_2 Group 1 Trading Program, or CSAPR SO_2 Group 2 Trading Program, then this natural person shall be the same natural person as the alternate designated representative as defined in the respective program.

Assurance account means an Allowance Management System account, established by the Administrator under § 97.1025(b)(3) for certain owners and operators of a group of one or more base CSAPR NO_X Ozone Season Group 3 sources and units in a given State (and Indian country within the borders of such State), in which are held CSAPR NO_X Ozone Season Group 3 allowances available for use for a control period in a given year in complying with the CSAPR NO_X Ozone Season Group 3 assurance provisions in accordance with §§ 97.1006 and 97.1025.

Auction means, with regard to CSAPR NO_X Ozone Season Group 3 allowances, the sale to any person by a State or permitting authority, in accordance with a SIP revision submitted by the State and approved by the Administrator under § 52.38(b)(10), (12), or (13) of this chapter, of such CSAPR NO_X Ozone Season Group 3 allowances to be initially recorded in an Allowance Management System account.

Authorized account representative means, for a general account, the natural person who is authorized, in accordance with this subpart, to transfer and otherwise dispose of CSAPR NO_X Ozone Season Group 3 allowances held in the general account and, for a CSAPR NO_X Ozone Season Group 3 source's compliance account, the designated representative of the source.

Automated data acquisition and handling system or *DAHS* means the component of the continuous emission monitoring system, or other emissions monitoring system approved for use under this subpart, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by this subpart.

Base CSAPR NO_X Ozone Season Group 3 source means a source that includes one or more base CSAPR NO_X Ozone Season Group 3 units.

Base CSAPR NO_X Ozone Season Group 3 unit means a CSAPR NO_X Ozone Season Group 3 unit, provided that any unit that would not be a CSAPR NO_X Ozone Season Group 3 unit under § 97.1004(a) and (b) is not a base CSAPR NO_X Ozone Season Group 3 unit notwithstanding the provisions of any SIP revision approved by the Administrator under § 52.38(b)(10), (12), or (13) of this chapter.

Biomass means—

(1) Any organic material grown for the purpose of being converted to energy;

(2) Any organic byproduct of agriculture that can be converted into energy; or

(3) Any material that can be converted into energy and is nonmerchantable for other purposes, that is segregated from other material that is nonmerchantable for other purposes, and that is;

(i) A forest-related organic resource, including mill residues, precommercial thinnings, slash, brush, or byproduct from conversion of trees to merchantable material; or

(ii) A wood material, including pallets, crates, dunnage, manufacturing and construction materials (other than pressure-treated, chemically-treated, or painted wood products), and landscape or right-of-way tree trimmings.

Boiler means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Bottoming-cycle unit means a unit in which the energy input to the unit is first used to produce useful thermal energy, where at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

Business day means a day that does not fall on a weekend or a federal holiday.

Certifying official means a natural person who is:

(1) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function or any other person who performs similar policy- or decision-making functions for the corporation;

(2) For a partnership or sole proprietorship, a general partner or the proprietor respectively; or

(3) For a local government entity or State, federal, or other public agency, a principal executive officer or ranking elected official.

Clean Air Act means the Clean Air Act, 42 U.S.C. 7401, *et seq.*

Coal means ''coal'' as defined in § 72.2 of this chapter.

Coal-derived fuel means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

Cogeneration system means an integrated group, at a source, of equipment (including a boiler, or combustion turbine, and a generator) designed to produce useful thermal energy for industrial, commercial, heating, or cooling purposes and electricity through the sequential use of energy.

Cogeneration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a topping-cycle unit or a bottoming-cycle unit:

(1) Operating as part of a cogeneration system; and

(2) Producing on an annual average basis—

(i) For a topping-cycle unit,

(A) Useful thermal energy not less than 5 percent of total energy output; and

(B) Useful power that, when added to one-half of useful thermal energy produced, is not less than 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

(ii) For a bottoming-cycle unit, useful power not less than 45 percent of total energy input;

(3) Provided that the requirements in paragraph (2) of this definition shall not apply to a calendar year referenced in paragraph (2) of this definition during which the unit did not operate at all;

(4) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input from all fuel, except biomass if the unit is a boiler; and

(5) Provided that, if, throughout its operation during the 12-month period or a calendar year referenced in paragraph (2) of this definition, a unit is operated as part of a cogeneration system and the cogeneration system meets on a system-wide basis the requirement in paragraph (2)(i)(B) or (2)(ii) of this definition, the unit shall be deemed to meet such requirement during that 12-month period or calendar year.

Combustion turbine means an enclosed device comprising:

(1) If the device is simple cycle, a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

(2) If the device is combined cycle, the equipment described in paragraph (1) of this definition and any associated duct burner, heat recovery steam generator, and steam turbine.

Commence commercial operation means, with regard to a unit:

(1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 97.1005.

(i) For a unit that is a CSAPR NO_X Ozone Season Group 3 unit under § 97.1004 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition and that subsequently undergoes a physical change or is moved to a new location or source, such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit that is a CSAPR NO_X Ozone Season Group 3 unit under § 97.1004 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition and that is subsequently replaced by a unit at the same or a different source, such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 97.1005, for a unit that is not a CSAPR NO_X Ozone Season Group 3 unit under § 97.1004 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CSAPR NO_X Ozone Season Group 3 unit under § 97.1004.

(i) For a unit with a date for commencement of commercial operation as defined in the introductory text of paragraph (2) of this definition and that subsequently undergoes a physical change or is moved to a different location or source, such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit with a date for commencement of commercial operation as defined in the introductory text of paragraph (2) of this definition and that is subsequently replaced by a unit at the same or a different source, such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

Common designated representative means, with regard to a control period in a given year, a designated representative where, as of April 1 immediately after the allowance transfer deadline for such a control period before 2023, or as of July 1 immediately after such deadline for such a control period in 2023 or thereafter, the same natural person is authorized under §§ 97.1013(a) and 97.1015(a) as the designated representative for a group of one or more base CSAPR NO_X Ozone Season Group 3 sources and units located in a State (and Indian country within the borders of such State).

Common designated representative's assurance level means, with regard to a specific common designated representative and a State (and Indian country within the borders of such State) and control period in a given year for which the State assurance level is exceeded as described in § 97.1006(c)(2)(iii):

(1) The amount (rounded to the nearest allowance) equal to the sum of the total amount of CSAPR NO_X Ozone Season Group 3 allowances allocated for such control period to the group of one or more base CSAPR NO_X Ozone Season Group 3 units located in such State (and such Indian country) and having the common designated representative for such control period and the total amount of CSAPR NO_X Ozone Season Group 3 allowances purchased by an owner or operator of such base CSAPR NO_X Ozone Season Group 3 units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance accounts for such base CSAPR NO_X Ozone Season Group 3 units in accordance with the CSAPR NO_X Ozone Season Group 3 allowance auction provisions in a SIP revision approved by the Administrator under § 52.38(b)(10), (12), or (13) of this chapter, multiplied by the sum of the State NO_X Ozone Season Group 3 trading budget under § 97.1010(a) and the State's variability limit under § 97.1010(b) for such control period and divided by the greater of such State NO_X Ozone Season Group 3 trading budget or the sum of all amounts of CSAPR NO_X Ozone Season Group 3 allowances for such control period treated for purposes of this definition as having been allocated to or purchased in the State's auction for all such base CSAPR NO_X Ozone Season Group 3 units;

(2) Provided that—

(i) For a control period before 2023 only, in the case of a base CSAPR NO_X Ozone Season Group 3 unit that operates during, but has no amount of CSAPR NO_X Ozone Season Group 3 allowances allocated under §§ 97.1011 and 97.1012 for, such control period, the unit shall be treated, solely for purposes of this definition, as being allocated an amount (rounded to the nearest allowance) of CSAPR NO_X Ozone Season Group 3 allowances for such control period equal to the unit's allowable NO_X emission rate applicable to such control period, multiplied by a capacity factor of 0.92 (if the unit is a boiler combusting any amount of coal or coal-derived fuel during such control period), 0.32 (if the unit is a simple cycle combustion turbine during such control period), 0.71 (if the unit is a combined cycle combustion turbine during such control period), 0.73 (if the unit is an integrated coal gasification combined cycle unit during such control period), or 0.44 (for any other unit), multiplied by the unit's maximum hourly load as reported in accordance with this subpart and by 3,672 hours/control period, and divided by 2,000 lb/ton;

(ii) The allocations of CSAPR NO_X Ozone Season Group 3 allowances for any control period taken into account for purposes of this definition exclude any CSAPR NO_X Ozone Season Group 3 allowances allocated for such control period under § 97.526(c)(3), under § 97.526(c)(4) or (5) pursuant to an exception under § 97.526(c)(3), under § 97.826(c)(1) or (3), or under § 97.826(c)(4) or (5) pursuant to an exception under § 97.826(c)(1) or (3);

(iii) In the case of the base CSAPR NO_X Ozone Season Group 3 units at a base CSAPR NO_X Ozone Season Group 3 source in a State with regard to which CSAPR NO_X Ozone Season Group 3 allowances have been allocated under § 97.526(c)(2) for a given control period, the units at each such source will be treated, solely for purposes of this definition, as having been allocated under § 97.526(c)(2), or under

§ 97.526(c)(4) or (5) pursuant to an exception under § 97.526(c)(2), an amount of CSAPR NO_X Ozone Season Group 3 allowances for such control period equal to the sum of the total amount of CSAPR NO_X Ozone Season Group 1 allowances allocated for such control period to such units and the total amount of CSAPR NO_X Ozone Season Group 1 allowances purchased by an owner or operator of such units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance account for such source in accordance with the CSAPR NO_X Ozone Season Group 1 allowance auction provisions in a SIP revision approved by the Administrator under § 52.38(b)(4) or (5) of this chapter, divided by the conversion factor determined under § 97.526(c)(2)(ii) with regard to the State's SIP revision under § 52.38(b)(10) of this chapter, and rounded up to the nearest whole allowance;

(iv) In the case of the base CSAPR NO_X Ozone Season Group 3 units at a base CSAPR NO_X Ozone Season Group 3 source in a State with regard to which CSAPR NO_X Ozone Season Group 3 allowances have been allocated under § 97.826(c)(2) for a given control period, the units at each such source will be treated, solely for purposes of this definition, as having been allocated under § 97.826(c)(2), or under § 97.826(c)(4) or (5) pursuant to an exception under § 97.826(c)(2), an amount of CSAPR NO_X Ozone Season Group 3 allowances for such control period equal to the sum of the total amount of CSAPR NO_X Ozone Season Group 2 allowances allocated for such control period to such units and the total amount of CSAPR NO_X Ozone Season Group 2 allowances purchased by an owner or operator of such units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance account for such source in accordance with the CSAPR NO_X Ozone Season Group 2 allowance auction provisions in a SIP revision approved by the Administrator under § 52.38(b)(8) or (9) of this chapter, divided by the conversion factor determined under § 97.826(c)(2)(ii) with regard to the State's SIP revision under § 52.38(b)(10) of this chapter, and rounded up to the nearest whole allowance; and

(v) For purposes of the calculations under paragraph (1) of this definition for the control period in 2021 only, for each State the amount of the State NO_X Ozone Season Group 3 trading budget shall be deemed to be increased by the supplemental amount of CSAPR NO_X Ozone Season Group 3 allowances determined for the State under § 97.1010(d) and the amount of the State's variability limit shall be deemed to be increased by the product of the supplemental amount of CSAPR NO_X Ozone Season Group 3 allowances determined for the State under § 97.1010(d) multiplied by 0.21, rounded to the nearest allowance;

Common designated representative's share means, with regard to a specific common designated representative for a control period in a given year and a total amount of NO_X emissions from all base CSAPR NO_X Ozone Season Group 3 units in a State (and Indian country within the borders of such State) during such control period, the total tonnage of NO_X emissions during such control period from the group of one or more base CSAPR NO_X Ozone Season Group 3 units located in such State (and such Indian country) and having the common designated representative for such control period.

Common stack means a single flue through which emissions from 2 or more units are exhausted.

Compliance account means an Allowance Management System account, established by the Administrator for a CSAPR NO_X Ozone Season Group 3 source under this subpart, in which any CSAPR NO_X Ozone Season Group 3 allowance allocations to the CSAPR NO_X Ozone Season Group 3 units at the source are recorded and in which are held any CSAPR NO_X Ozone Season Group 3 allowances available for use for a control period in a given year in complying with the source's CSAPR NO_X Ozone Season Group 3 emissions limitation in accordance with §§ 97.1006 and 97.1024.

Continuous emission monitoring system or *CEMS* means the equipment required under this subpart to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes and using an automated data acquisition and handling system (DAHS), a permanent record of NO_X emissions, stack gas volumetric flow rate, stack gas moisture content, and O_2 or CO_2 concentration (as applicable), in a manner consistent with part 75 of this chapter and §§ 97.1030 through 97.1035. The following systems are the principal types of continuous emission monitoring systems:

(1) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

(2) A NO_X concentration monitoring system, consisting of a NO_X pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X emissions, in parts per million (ppm);

(3) A NO_X emission rate (or NO_X-diluent) monitoring system, consisting of a NO_X pollutant concentration monitor, a diluent gas (CO_2 or O_2) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X concentration, in parts per million (ppm), diluent gas concentration, in percent CO_2 or O_2, and NO_X emission rate, in pounds per million British thermal units (lb/mmBtu);

(4) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O;

(5) A CO_2 monitoring system, consisting of a CO_2 pollutant concentration monitor (or an O_2 monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO_2 emissions, in percent CO_2; and

(6) An O_2 monitoring system, consisting of an O_2 concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O_2, in percent O_2.

Control period means the period starting May 1 of a calendar year, except as provided in § 97.1006(c)(3), and ending on September 30 of the same year, inclusive.

CSAPR NO_X Annual Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with subpart AAAAA of this part and § 52.38(a) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(a)(3) or (4) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(a)(5) of this chapter), as a means of mitigating interstate transport of fine particulates and NO_X.

CSAPR NO_X Ozone Season Group 1 allowance means a limited authorization issued and allocated or auctioned by the Administrator under subpart BBBBB of this part, or by a State or permitting authority under a SIP revision approved by the Administrator

under § 52.38(b)(3), (4), or (5) of this chapter, to emit one ton of NO_X during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR NO_X Ozone Season Group 1 Trading Program.

CSAPR NO_X Ozone Season Group 1 Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with subpart BBBBB of this part and § 52.38(b)(1), (b)(2)(i) and (ii), and (b)(3) through (5) and (14) through (16) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(3) or (4) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(5) of this chapter), as a means of mitigating interstate transport of ozone and NO_X.

CSAPR NO_X Ozone Season Group 2 allowance means a limited authorization issued and allocated or auctioned by the Administrator under subpart EEEEE of this part or § 97.526(c), or by a State or permitting authority under a SIP revision approved by the Administrator under § 52.38(b)(6), (7), (8), or (9) of this chapter, to emit one ton of NO_X during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR NO_X Ozone Season Group 2 Trading Program.

CSAPR NO_X Ozone Season Group 2 Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with subpart EEEEE of this part and § 52.38(b)(1), (b)(2)(iii) and (iv), and (b)(6) through (9), (14), (15), and (17) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(7) or (8) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(6) or (9) of this chapter), as a means of mitigating interstate transport of ozone and NO_X.

CSAPR NO_X Ozone Season Group 3 allowance means a limited authorization issued and allocated or auctioned by the Administrator under this subpart, § 97.526(c), or § 97.826(c), or by a State or permitting authority under a SIP revision approved by the Administrator under § 52.38(b)(10), (11), (12), or (13) of this chapter, to emit one ton of NO_X during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR NO_X Ozone Season Group 3 Trading Program.

CSAPR NO_X Ozone Season Group 3 allowance deduction or *deduct CSAPR NO_X Ozone Season Group 3 allowances* means the permanent withdrawal of CSAPR NO_X Ozone Season Group 3 allowances by the Administrator from a compliance account (*e.g.,* in order to account for compliance with the CSAPR NO_X Ozone Season Group 3 emissions limitation) or from an assurance account (*e.g.,* in order to account for compliance with the assurance provisions under §§ 97.1006 and 97.1025).

CSAPR NO_X Ozone Season Group 3 allowances held or *hold CSAPR NO_X Ozone Season Group 3 allowances* means the CSAPR NO_X Ozone Season Group 3 allowances treated as included in an Allowance Management System account as of a specified point in time because at that time they:

(1) Have been recorded by the Administrator in the account or transferred into the account by a correctly submitted, but not yet recorded, CSAPR NO_X Ozone Season Group 3 allowance transfer in accordance with this subpart; and

(2) Have not been transferred out of the account by a correctly submitted, but not yet recorded, CSAPR NO_X Ozone Season Group 3 allowance transfer in accordance with this subpart.

CSAPR NO_X Ozone Season Group 3 emissions limitation means, for a CSAPR NO_X Ozone Season Group 3 source, the tonnage of NO_X emissions authorized in a control period in a given year by the CSAPR NO_X Ozone Season Group 3 allowances available for deduction for the source under § 97.1024(a) for such control period.

CSAPR NO_X Ozone Season Group 3 source means a source that includes one or more CSAPR NO_X Ozone Season Group 3 units.

CSAPR NO_X Ozone Season Group 3 Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with this subpart and § 52.38(b)(1), (b)(2)(v), and (b)(10) through (15) and (18) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(11) or (12) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(10) or (13) of this chapter), as a means of mitigating interstate transport of ozone and NO_X.

CSAPR NO_X Ozone Season Group 3 unit means a unit that is subject to the CSAPR NO_X Ozone Season Group 3 Trading Program.

CSAPR SO_X Group 1 Trading Program means a multi-state SO_2 air pollution control and emission reduction program established in accordance with subpart CCCCC of this part and § 52.39(a), (b), (d) through (f), and (j) through (l) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.39(d) or (e) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.39(f) of this chapter), as a means of mitigating interstate transport of fine particulates and SO_2.

CSAPR SO_X Group 2 Trading Program means a multi-state SO_2 air pollution control and emission reduction program established in accordance with subpart DDDDD of this part and § 52.39(a), (c), (g) through (k), and (m) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.39(g) or (h) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.39(i) of this chapter), as a means of mitigating interstate transport of fine particulates and SO_2.

Designated representative means, for a CSAPR NO_X Ozone Season Group 3 source and each CSAPR NO_X Ozone Season Group 3 unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with this subpart, to represent and legally bind each owner and operator in matters pertaining to the CSAPR NO_X Ozone Season Group 3 Trading Program. If the CSAPR NO_X Ozone Season Group 3 source is also subject to the Acid Rain Program, CSAPR NO_X Annual Trading Program, CSAPR SO_2 Group 1 Trading Program, or CSAPR SO_2 Group 2 Trading Program, then this natural person shall be the same natural person as the designated representative as defined in the respective program.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the designated representative, and as modified by the Administrator:

(1) In accordance with this subpart; and

(2) With regard to a period before the unit or source is required to measure, record, and report such air pollutants in accordance with this subpart, in accordance with part 75 of this chapter.

Excess emissions means any ton of emissions from the CSAPR NO_X Ozone Season Group 3 units at a CSAPR NO_X Ozone Season Group 3 source during a control period in a given year that

exceeds the CSAPR NO_X Ozone Season Group 3 emissions limitation for the source for such control period.

Fossil fuel means—

(1) Natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material; or

(2) For purposes of applying the limitation on ''average annual fuel consumption of fossil fuel'' in § 97.1004(b)(2)(i)(B) and (b)(2)(ii), natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material for the purpose of creating useful heat.

Fossil-fuel-fired means, with regard to a unit, combusting any amount of fossil fuel in 2005 or any calendar year thereafter.

General account means an Allowance Management System account, established under this subpart, that is not a compliance account or an assurance account.

Generator means a device that produces electricity.

Heat input means, for a unit for a specified period of unit operating time, the product (in mmBtu) of the gross calorific value of the fuel (in mmBtu/lb) fed into the unit multiplied by the fuel feed rate (in lb of fuel/time) and unit operating time, as measured, recorded, and reported to the Administrator by the designated representative and as modified by the Administrator in accordance with this subpart and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust.

Heat input rate means, for a unit, the quotient (in mmBtu/hr) of the amount of heat input for a specified period of unit operating time (in mmBtu) divided by unit operating time (in hr) or, for a unit and a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

Heat rate means, for a unit, the quotient (in mmBtu/unit of load) of the unit's maximum design heat input rate (in Btu/hr) divided by the product of 1,000,000 Btu/mmBtu and the unit's maximum hourly load.

Indian country means ''Indian country'' as defined in 18 U.S.C. 1151.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

(1) For the life of the unit;

(2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(3) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Maximum design heat input rate means, for a unit, the maximum amount of fuel per hour (in Btu/hr) that the unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

Monitoring system means any monitoring system that meets the requirements of this subpart, including a continuous emission monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

Nameplate capacity means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe, rounded to the nearest tenth) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as of such installation as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount (in MWe, rounded to the nearest tenth) as of such completion as specified by the person conducting the physical change.

Natural gas means ''natural gas'' as defined in § 72.2 of this chapter.

Newly affected CSAPR NO_X Ozone Season Group 3 unit means a unit that was not a CSAPR NO_X Ozone Season Group 3 unit when it began operating but that thereafter becomes a CSAPR NO_X Ozone Season Group 3 unit.

Nitrogen oxides means all oxides of nitrogen except nitrous oxide (N_2O), reported on an equivalent molecular weight basis as nitrogen dioxide (NO_2).

Operate or *operation* means, with regard to a unit, to combust fuel.

Operator means, for a CSAPR NO_X Ozone Season Group 3 source or a CSAPR NO_X Ozone Season Group 3 unit at a source respectively, any person who operates, controls, or supervises a CSAPR NO_X Ozone Season Group 3 unit at the source or the CSAPR NO_X Ozone Season Group 3 unit and shall include, but not be limited to, any holding company, utility system, or plant manager of such source or unit.

Owner means, for a CSAPR NO_X Ozone Season Group 3 source or a CSAPR NO_X Ozone Season Group 3 unit at a source respectively, any of the following persons:

(1) Any holder of any portion of the legal or equitable title in a CSAPR NO_X Ozone Season Group 3 unit at the source or the CSAPR NO_X Ozone Season Group 3 unit;

(2) Any holder of a leasehold interest in a CSAPR NO_X Ozone Season Group 3 unit at the source or the CSAPR NO_X Ozone Season Group 3 unit, provided that, unless expressly provided for in a leasehold agreement, ''owner'' shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such CSAPR NO_X Ozone Season Group 3 unit; and

(3) Any purchaser of power from a CSAPR NO_X Ozone Season Group 3 unit at the source or the CSAPR NO_X Ozone Season Group 3 unit under a life-of-the-unit, firm power contractual arrangement.

Permanently retired means, with regard to a unit, a unit that is unavailable for service and that the unit's owners and operators do not expect to return to service in the future.

Permitting authority means ''permitting authority'' as defined in §§ 70.2 and 71.2 of this chapter.

Potential electrical output capacity means, for a unit (in MWh/yr), 33 percent of the unit's maximum design heat input rate (in Btu/hr), divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

Receive or *receipt of* means, when referring to the Administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official log, or by a notation made on the document, information, or correspondence, by the Administrator in the regular course of business.

Recordation, record, or *recorded* means, with regard to CSAPR NO_X Ozone Season Group 3 allowances, the moving of CSAPR NO_X Ozone Season Group 3 allowances by the Administrator into, out of, or between Allowance Management System accounts, for purposes of allocation, auction, transfer, or deduction.

Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in § 75.22 of this chapter.

Replacement, replace, or *replaced* means, with regard to a unit, the demolishing of a unit, or the permanent retirement and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or retired unit (the replaced unit).

Sequential use of energy means:

(1) The use of reject heat from electricity production in a useful thermal energy application or process; or

(2) The use of reject heat from a useful thermal energy application or process in electricity production.

Serial number means, for a CSAPR NO_X Ozone Season Group 3 allowance, the unique identification number assigned to each CSAPR NO_X Ozone Season Group 3 allowance by the Administrator.

Solid waste incineration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a ''solid waste incineration unit'' as defined in section 129(g)(1) of the Clean Air Act.

Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. This definition does not change or otherwise affect the definition of ''major source'', ''stationary source'', or ''source'' as set forth and implemented in a title V operating permit program or any other program under the Clean Air Act.

State means one of the States that is subject to the CSAPR NO_X Ozone Season Group 3 Trading Program pursuant to § 52.38(b)(1), (b)(2)(v), and (b)(10) through (15) and (18) of this chapter.

Submit or *serve* means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(1) In person;

(2) By United States Postal Service; or

(3) By other means of dispatch or transmission and delivery;

(4) Provided that compliance with any ''submission'' or ''service'' deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Topping-cycle unit means a unit in which the energy input to the unit is first used to produce useful power, including electricity, where at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

Total energy input means, for a unit, total energy of all forms supplied to the unit, excluding energy produced by the unit. Each form of energy supplied shall be measured by the lower heating value of that form of energy calculated as follows:

$$LHV = HHV - 10.55\ (W + 9H)$$

where:

LHV = lower heating value of the form of energy in Btu/lb,

HHV = higher heating value of the form of energy in Btu/lb,

W = weight % of moisture in the form of energy, and

H = weight % of hydrogen in the form of energy.

Total energy output means, for a unit, the sum of useful power and useful thermal energy produced by the unit.

Unit means a stationary, fossil-fuel-fired boiler, stationary, fossil-fuel-fired combustion turbine, or other stationary, fossil-fuel-fired combustion device. A unit that undergoes a physical change or is moved to a different location or source shall continue to be treated as the same unit. A unit (the replaced unit) that is replaced by another unit (the replacement unit) at the same or a different source shall continue to be treated as the same unit, and the replacement unit shall be treated as a separate unit.

Unit operating day means, with regard to a unit, a calendar day in which the unit combusts any fuel.

Unit operating hour or *hour of unit operation* means, with regard to a unit, an hour in which the unit combusts any fuel.

Useful power means, with regard to a unit, electricity or mechanical energy that the unit makes available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Useful thermal energy means thermal energy that is:

(1) Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;

(2) Used in a heating application (*e.g.,* space heating or domestic hot water heating); or

(3) Used in a space cooling application (*i.e.,* in an absorption chiller).

Utility power distribution system means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

§ 97.1003 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this subpart are defined as follows:

Btu—British thermal unit
CO_2—carbon dioxide
CSAPR—Cross-State Air Pollution Rule
H_2O—water
hr—hour
kWh—kilowatt-hour
lb—pound
mmBtu—million Btu
MWe—megawatt electrical
MWh—megawatt-hour
NO_X—nitrogen oxides
O_2—oxygen
ppm—parts per million
scfh—standard cubic feet per hour
SIP—State implementation plan
SO_2—sulfur dioxide
TR—Transport Rule
yr—year

§ 97.1004 Applicability.

(a) Except as provided in paragraph (b) of this section:

(1) The following units in a State (and Indian country within the borders of such State) shall be CSAPR NO_X Ozone Season Group 3 units, and any source that includes one or more such units shall be a CSAPR NO_X Ozone Season Group 3 source, subject to the requirements of this subpart: Any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, on or after January 1, 2005, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(2) If a stationary boiler or stationary combustion turbine that, under paragraph (a)(1) of this section, is not a CSAPR NO_X Ozone Season Group 3 unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CSAPR NO_X Ozone Season Group 3 unit as provided in paragraph (a)(1) of this section on the first date on which it both combusts fossil fuel and serves such generator.

(b) Any unit in a State (and Indian country within the borders of such State) that otherwise is a CSAPR NO_X Ozone Season Group 3 unit under paragraph (a) of this section and that meets the requirements set forth in paragraph (b)(1)(i) or (b)(2)(i) of this section shall not be a CSAPR NO_X Ozone Season Group 3 unit:

(1)(i) Any unit:

(A) Qualifying as a cogeneration unit throughout the later of 2005 or the 12-month period starting on the date the unit first produces electricity and

continuing to qualify as a cogeneration unit throughout each calendar year ending after the later of 2005 or such 12-month period; and

(B) Not supplying in 2005 or any calendar year thereafter more than one-third of the unit's potential electrical output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(ii) If, after qualifying under paragraph (b)(1)(i) of this section as not being a CSAPR NO_X Ozone Season Group 3 unit, a unit subsequently no longer meets all the requirements of paragraph (b)(1)(i) of this section, the unit shall become a CSAPR NO_X Ozone Season Group 3 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section. The unit shall thereafter continue to be a CSAPR NO_X Ozone Season Group 3 unit.

(2)(i) Any unit:

(A) Qualifying as a solid waste incineration unit throughout the later of 2005 or the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a solid waste incineration unit throughout each calendar year ending after the later of 2005 or such 12-month period; and

(B) With an average annual fuel consumption of fossil fuel for the first 3 consecutive calendar years of operation starting no earlier than 2005 of less than 20 percent (on a Btu basis) and an average annual fuel consumption of fossil fuel for any 3 consecutive calendar years thereafter of less than 20 percent (on a Btu basis).

(ii) If, after qualifying under paragraph (b)(2)(i) of this section as not being a CSAPR NO_X Ozone Season Group 3 unit, a unit subsequently no longer meets all the requirements of paragraph (b)(2)(i) of this section, the unit shall become a CSAPR NO_X Ozone Season Group 3 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 2005 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more. The unit shall thereafter continue to be a CSAPR NO_X Ozone Season Group 3 unit.

(c) A certifying official of an owner or operator of any unit or other equipment may submit a petition (including any supporting documents) to the Administrator at any time for a determination concerning the applicability, under paragraphs (a) and (b) of this section or a SIP revision approved under § 52.38(b)(10), (12), or (13) of this chapter, of the CSAPR NO_X Ozone Season Group 3 Trading Program to the unit or other equipment.

(1) *Petition content.* The petition shall be in writing and include the identification of the unit or other equipment and the relevant facts about the unit or other equipment. The petition and any other documents provided to the Administrator in connection with the petition shall include the following certification statement, signed by the certifying official: ''I am authorized to make this submission on behalf of the owners and operators of the unit or other equipment for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(2) *Response.* The Administrator will issue a written response to the petition and may request supplemental information determined by the Administrator to be relevant to such petition. The Administrator's determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CSAPR NO_X Ozone Season Group 3 Trading Program to the unit or other equipment shall be binding on any State or permitting authority unless the Administrator determines that the petition or other documents or information provided in connection with the petition contained significant, relevant errors or omissions.

§ 97.1005 Retired unit exemption.

(a)(1) Any CSAPR NO_X Ozone Season Group 3 unit that is permanently retired shall be exempt from § 97.1006(b) and (c)(1), § 97.1024, and §§ 97.1030 through 97.1035.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CSAPR NO_X Ozone Season Group 3 unit is permanently retired. Within 30 days of the unit's permanent retirement, the designated representative shall submit a statement to the Administrator. The statement shall state, in a format prescribed by the Administrator, that the unit was permanently retired on a specified date and will comply with the requirements of paragraph (b) of this section.

(b)(1) A unit exempt under paragraph (a) of this section shall not emit any NO_X, starting on the date that the exemption takes effect.

(2) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (a) of this section shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(3) The owners and operators and, to the extent applicable, the designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CSAPR NO_X Ozone Season Group 3 Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(4) A unit exempt under paragraph (a) of this section shall lose its exemption on the first date on which the unit resumes operation. Such unit shall be treated, for purposes of applying allocation, monitoring, reporting, and recordkeeping requirements under this subpart, as a unit that commences commercial operation on the first date on which the unit resumes operation.

§ 97.1006 Standard requirements.

(a) *Designated representative requirements.* The owners and operators shall comply with the requirement to have a designated representative, and may have an alternate designated representative, in accordance with §§ 97.1013 through 97.1018.

(b) *Emissions monitoring, reporting, and recordkeeping requirements.* (1) The owners and operators, and the designated representative, of each CSAPR NO_X Ozone Season Group 3 source and each CSAPR NO_X Ozone Season Group 3 unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of §§ 97.1030 through 97.1035.

(2) The emissions data determined in accordance with §§ 97.1030 through 97.1035 shall be used to calculate allocations of CSAPR NO_X Ozone Season Group 3 allowances under §§ 97.1011(a)(2) and (b) and 97.1012 and

to determine compliance with the CSAPR NO_X Ozone Season Group 3 emissions limitation and assurance provisions under paragraph (c) of this section, provided that, for each monitoring location from which mass emissions are reported, the mass emissions amount used in calculating such allocations and determining such compliance shall be the mass emissions amount for the monitoring location determined in accordance with §§ 97.1030 through 97.1035 and rounded to the nearest ton, with any fraction of a ton less than 0.50 being deemed to be zero.

(c) *NO_X emissions requirements*—(1) *CSAPR NO_X Ozone Season Group 3 emissions limitation.* (i) As of the allowance transfer deadline for a control period in a given year, the owners and operators of each CSAPR NO_X Ozone Season Group 3 source and each CSAPR NO_X Ozone Season Group 3 unit at the source shall hold, in the source's compliance account, CSAPR NO_X Ozone Season Group 3 allowances available for deduction for such control period under § 97.1024(a) in an amount not less than the tons of total NO_X emissions for such control period from all CSAPR NO_X Ozone Season Group 3 units at the source.

(ii) If total NO_X emissions during a control period in a given year from the CSAPR NO_X Ozone Season Group 3 units at a CSAPR NO_X Ozone Season Group 3 source are in excess of the CSAPR NO_X Ozone Season Group 3 emissions limitation set forth in paragraph (c)(1)(i) of this section, then:

(A) The owners and operators of the source and each CSAPR NO_X Ozone Season Group 3 unit at the source shall hold the CSAPR NO_X Ozone Season Group 3 allowances required for deduction under § 97.1024(d); and

(B) The owners and operators of the source and each CSAPR NO_X Ozone Season Group 3 unit at the source shall pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act, and each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart and the Clean Air Act.

(2) *CSAPR NO_X Ozone Season Group 3 assurance provisions.* (i) If total NO_X emissions during a control period in a given year from all base CSAPR NO_X Ozone Season Group 3 units at base CSAPR NO_X Ozone Season Group 3 sources in a State (and Indian country within the borders of such State) exceed the State assurance level, then the owners and operators of such sources and units in each group of one or more sources and units having a common designated representative for such control period, where the common designated representative's share of such NO_X emissions during such control period exceeds the common designated representative's assurance level for the State and such control period, shall hold (in the assurance account established for the owners and operators of such group) CSAPR NO_X Ozone Season Group 3 allowances available for deduction for such control period under § 97.1025(a) in an amount equal to two times the product (rounded to the nearest whole number), as determined by the Administrator in accordance with § 97.1025(b), of multiplying—

(A) The quotient of the amount by which the common designated representative's share of such NO_X emissions exceeds the common designated representative's assurance level divided by the sum of the amounts, determined for all common designated representatives for such sources and units in the State (and Indian country within the borders of such State) for such control period, by which each common designated representative's share of such NO_X emissions exceeds the respective common designated representative's assurance level; and

(B) The amount by which total NO_X emissions from all base CSAPR NO_X Ozone Season Group 3 units at base CSAPR NO_X Ozone Season Group 3 sources in the State (and Indian country within the borders of such State) for such control period exceed the State assurance level.

(ii) The owners and operators shall hold the CSAPR NO_X Ozone Season Group 3 allowances required under paragraph (c)(2)(i) of this section, as of midnight of November 1 (if it is a business day), or midnight of the first business day thereafter (if November 1 is not a business day), immediately after the year of such control period.

(iii) Total NO_X emissions from all base CSAPR NO_X Ozone Season Group 3 units at base CSAPR NO_X Ozone Season Group 3 sources in a State (and Indian country within the borders of such State) during a control period in a given year exceed the State assurance level if such total NO_X emissions exceed the sum, for such control period, of the State NO_X Ozone Season Group 3 trading budget under § 97.1010(a), the State's variability limit under § 97.1010(b), and, for the control period in 2021 only, the product of the supplemental amount of CSAPR NO_X Ozone Season Group 3 allowances determined for the State under § 97.1010(d) multiplied by 1.21, rounded to the nearest allowance.

(iv) It shall not be a violation of this subpart or of the Clean Air Act if total NO_X emissions from all base CSAPR NO_X Ozone Season Group 3 units at base CSAPR NO_X Ozone Season Group 3 sources in a State (and Indian country within the borders of such State) during a control period exceed the State assurance level or if a common designated representative's share of total NO_X emissions from the base CSAPR NO_X Ozone Season Group 3 units at base CSAPR NO_X Ozone Season Group 3 sources in a State (and Indian country within the borders of such State) during a control period exceeds the common designated representative's assurance level.

(v) To the extent the owners and operators fail to hold CSAPR NO_X Ozone Season Group 3 allowances for a control period in a given year in accordance with paragraphs (c)(2)(i) through (iii) of this section,

(A) The owners and operators shall pay any fine, penalty, or assessment or comply with any other remedy imposed under the Clean Air Act; and

(B) Each CSAPR NO_X Ozone Season Group 3 allowance that the owners and operators fail to hold for such control period in accordance with paragraphs (c)(2)(i) through (iii) of this section and each day of such control period shall constitute a separate violation of this subpart and the Clean Air Act.

(3) *Compliance periods.* (i) A CSAPR NO_X Ozone Season Group 3 unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of May 1, 2021 or the deadline for meeting the unit's monitor certification requirements under § 97.1030(b) and for each control period thereafter.

(ii) A base CSAPR NO_X Ozone Season Group 3 unit shall be subject to the requirements under paragraph (c)(2) of this section for the control period starting on the later of May 1, 2021 or the deadline for meeting the unit's monitor certification requirements under § 97.1030(b) and for each control period thereafter.

(4) *Vintage of CSAPR NO_X Ozone Season Group 3 allowances held for compliance.* (i) A CSAPR NO_X Ozone Season Group 3 allowance held for compliance with the requirements under paragraph (c)(1)(i) of this section for a control period in a given year must be a CSAPR NO_X Ozone Season Group 3 allowance that was allocated or auctioned for such control period or a control period in a prior year.

(ii) A CSAPR NO_X Ozone Season Group 3 allowance held for compliance

with the requirements under paragraphs (c)(1)(ii)(A) and (c)(2)(i) through (iii) of this section for a control period in a given year must be a CSAPR NO_X Ozone Season Group 3 allowance that was allocated or auctioned for a control period in a prior year or the control period in the given year or in the immediately following year.

(5) *Allowance Management System requirements.* Each CSAPR NO_X Ozone Season Group 3 allowance shall be held in, deducted from, or transferred into, out of, or between Allowance Management System accounts in accordance with this subpart.

(6) *Limited authorization.* A CSAPR NO_X Ozone Season Group 3 allowance is a limited authorization to emit one ton of NO_X during the control period in one year. Such authorization is limited in its use and duration as follows:

(i) Such authorization shall only be used in accordance with the CSAPR NO_X Ozone Season Group 3 Trading Program; and

(ii) Notwithstanding any other provision of this subpart, the Administrator has the authority to terminate or limit the use and duration of such authorization to the extent the Administrator determines is necessary or appropriate to implement any provision of the Clean Air Act.

(7) *Property right.* A CSAPR NO_X Ozone Season Group 3 allowance does not constitute a property right.

(d) *Title V permit requirements.* (1) No title V permit revision shall be required for any allocation, holding, deduction, or transfer of CSAPR NO_X Ozone Season Group 3 allowances in accordance with this subpart.

(2) A description of whether a unit is required to monitor and report NO_X emissions using a continuous emission monitoring system (under subpart H of part 75 of this chapter), an excepted monitoring system (under appendices D and E to part 75 of this chapter), a low mass emissions excepted monitoring methodology (under § 75.19 of this chapter), or an alternative monitoring system (under subpart E of part 75 of this chapter) in accordance with §§ 97.1030 through 97.1035 may be added to, or changed in, a title V permit using minor permit modification procedures in accordance with §§ 70.7(e)(2) and 71.7(e)(1) of this chapter, provided that the requirements applicable to the described monitoring and reporting (as added or changed, respectively) are already incorporated in such permit. This paragraph explicitly provides that the addition of, or change to, a unit's description as described in the prior sentence is eligible for minor permit modification procedures in accordance with §§ 70.7(e)(2)(i)(B) and 71.7(e)(1)(i)(B) of this chapter.

(e) *Additional recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of each CSAPR NO_X Ozone Season Group 3 source and each CSAPR NO_X Ozone Season Group 3 unit at the source shall keep on site at the source each of the following documents (in hardcopy or electronic format) for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the Administrator.

(i) The certificate of representation under § 97.1016 for the designated representative for the source and each CSAPR NO_X Ozone Season Group 3 unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such certificate of representation and documents are superseded because of the submission of a new certificate of representation under § 97.1016 changing the designated representative.

(ii) All emissions monitoring information, in accordance with this subpart.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under, or to demonstrate compliance with the requirements of, the CSAPR NO_X Ozone Season Group 3 Trading Program.

(2) The designated representative of a CSAPR NO_X Ozone Season Group 3 source and each CSAPR NO_X Ozone Season Group 3 unit at the source shall make all submissions required under the CSAPR NO_X Ozone Season Group 3 Trading Program, except as provided in § 97.1018. This requirement does not change, create an exemption from, or otherwise affect the responsible official submission requirements under a title V operating permit program in parts 70 and 71 of this chapter.

(f) *Liability.* (1) Any provision of the CSAPR NO_X Ozone Season Group 3 Trading Program that applies to a CSAPR NO_X Ozone Season Group 3 source or the designated representative of a CSAPR NO_X Ozone Season Group 3 source shall also apply to the owners and operators of such source and of the CSAPR NO_X Ozone Season Group 3 units at the source.

(2) Any provision of the CSAPR NO_X Ozone Season Group 3 Trading Program that applies to a CSAPR NO_X Ozone Season Group 3 unit or the designated representative of a CSAPR NO_X Ozone Season Group 3 unit shall also apply to the owners and operators of such unit.

(g) *Effect on other authorities.* No provision of the CSAPR NO_X Ozone Season Group 3 Trading Program or exemption under § 97.1005 shall be construed as exempting or excluding the owners and operators, and the designated representative, of a CSAPR NO_X Ozone Season Group 3 source or CSAPR NO_X Ozone Season Group 3 unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 97.1007 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CSAPR NO_X Ozone Season Group 3 Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CSAPR NO_X Ozone Season Group 3 Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CSAPR NO_X Ozone Season Group 3 Trading Program, is not a business day, the time period shall be extended to the next business day.

§ 97.1008 Administrative appeal procedures.

The administrative appeal procedures for decisions of the Administrator under the CSAPR NO_X Ozone Season Group 3 Trading Program are set forth in part 78 of this chapter.

§ 97.1009 [Reserved]

§ 97.1010 State NO_X Ozone Season Group 3 trading budgets, new unit set-asides, Indian country new unit set-asides, and variability limits.

(a) The State NO_X Ozone Season Group 3 trading budgets, new unit set-asides, and Indian country new unit set-asides for allocations of CSAPR NO_X Ozone Season Group 3 allowances for the control periods in 2021, 2022, 2023, and 2024 and thereafter are as indicated in Tables 1, 2, and 3 to this paragraph (a), respectively:

TABLE 1 TO PARAGRAPH (a)—STATE NO_X OZONE SEASON GROUP 3 TRADING BUDGETS BY YEAR

[tons]

State	2021	2022	2023	2024 and thereafter
Alabama	7,786	7,610	7,610	7,610
Arkansas	8,708	8,330	8,330	8,330
Georgia	7,808	7,808	7,808	7,808
Illinois	9,444	9,415	8,397	8,397
Indiana	12,500	11,998	11,998	9,447
Iowa	7,714	7,626	7,266	7,266
Kansas	5,384	5,384	5,384	5,384
Kentucky	14,384	11,936	11,936	11,936
Louisiana	15,402	14,871	14,871	14,871
Maryland	1,522	1,498	1,498	1,498
Michigan	12,727	11,767	9,803	9,614
Mississippi	6,315	6,315	6,315	6,315
Missouri	11,358	11,358	11,079	11,079
New Jersey	1,253	1,253	1,253	1,253
New York	3,137	3,137	3,137	3,119
Ohio	9,605	9,676	9,676	9,676
Oklahoma	8,717	8,717	8,717	8,717
Pennsylvania	8,076	8,076	8,076	8,076
Tennessee	4,367	4,367	4,367	4,367
Texas	42,312	41,995	41,807	41,807
Virginia	4,544	3,656	3,656	3,395
West Virginia	13,686	12,813	11,810	11,810
Wisconsin	4,875	4,875	4,622	4,104

TABLE 2 TO PARAGRAPH (a)—NEW UNIT SET-ASIDES BY YEAR

[tons]

State	2021	2022	2023	2024 and thereafter
Alabama	148	144	144	144
Arkansas	174	167	167	167
Georgia	156	156	156	156
Illinois	181	181	173	173
Indiana	253	238	238	188
Iowa	146	145	138	138
Kansas	103	103	103	103
Kentucky	289	240	240	240
Louisiana	444	430	430	430
Maryland	31	33	33	33
Michigan	371	340	286	277
Mississippi	120	120	120	120
Missouri	227	227	222	222
New Jersey	27	27	27	27
New York	154	154	154	153
Ohio	285	291	291	291
Oklahoma	165	165	165	165
Pennsylvania	326	326	326	326
Tennessee	87	87	87	87
Texas	804	798	794	794
Virginia	91	76	76	68
West Virginia	273	261	236	236
Wisconsin	141	141	134	119

TABLE 3 TO PARAGRAPH (a)—INDIAN COUNTRY NEW UNIT SET-ASIDES BY YEAR

[tons]

State	2021	2022	2023	2024 and thereafter
Alabama	8	8	8	8
Arkansas	.....	.....	.....	.....
Georgia	.....	.....	.....	.....
Illinois	.....	.....	.....	.....
Indiana	.....	.....	.....	.....
Iowa	8	8	7	7
Kansas	5	5	5	5

TABLE 3 TO PARAGRAPH (a)—INDIAN COUNTRY NEW UNIT SET-ASIDES BY YEAR—Continued

[tons]

State	2021	2022	2023	2024 and thereafter
Kentucky	.....	.....	.....	.....
Louisiana	15	15	15	15
Maryland	.....	.....	.....	.....
Michigan	13	12	10	10
Mississippi	6	6	6	6
Missouri	.....	.....	.....	.....
New Jersey	.....	.....	.....	.....
New York	3	3	3	3
Ohio	.....	.....	.....	.....
Oklahoma	9	9	9	9
Pennsylvania	.....	.....	.....	.....
Tennessee	.....	.....	.....	.....
Texas	42	42	42	42
Virginia	.....	.....	.....	.....
West Virginia	.....	.....	.....	.....
Wisconsin	5	5	5	4

(b) The States' variability limits for the State NO_X Ozone Season Group 3 trading budgets for the control periods in 2021, 2022, 2023, and 2024 and thereafter are as indicated in Table 4 to this paragraph (b):

TABLE 4 TO PARAGRAPH (b)—VARIABILITY LIMITS BY YEAR

[tons]

State	2021	2022	2023	2024 and thereafter
Alabama	1,635	1,598	1,598	1,598
Arkansas	1,829	1,749	1,749	1,749
Georgia	1,640	1,640	1,640	1,640
Illinois	1,983	1,977	1,763	1,763
Indiana	2,625	2,520	2,520	1,984
Iowa	1,620	1,601	1,526	1,526
Kansas	1,131	1,131	1,131	1,131
Kentucky	3,021	2,507	2,507	2,507
Louisiana	3,234	3,123	3,123	3,123
Maryland	320	315	315	315
Michigan	2,673	2,471	2,059	2,019
Mississippi	1,326	1,326	1,326	1,326
Missouri	2,385	2,385	2,327	2,327
New Jersey	263	263	263	263
New York	659	659	659	655
Ohio	2,017	2,032	2,032	2,032
Oklahoma	1,831	1,831	1,831	1,831
Pennsylvania	1,696	1,696	1,696	1,696
Tennessee	917	917	917	917
Texas	8,886	8,819	8,779	8,779
Virginia	954	768	768	713
West Virginia	2,874	2,691	2,480	2,480
Wisconsin	1,024	1,024	971	862

(c) Each State NO_X Ozone Season Group 3 trading budget in this section includes any tons in a new unit set-aside or Indian country new unit set-aside but does not include any tons in a variability limit.

(d) For the control period in 2021 only, the Administrator will determine for each State a supplemental amount of CSAPR NO_X Ozone Season Group 3 allowances computed as the product, rounded to the nearest allowance, of the difference between the State NO_X Ozone Season Group 2 trading budget for the control period in 2021 under § 97.810(a) and the State NO_X Ozone Season Group 3 trading budget for the control period in 2021 under paragraph (a) of this section multiplied by a fraction whose numerator is the number of days from May 1, 2021 through [DATE 59 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], inclusive, and whose denominator is 153.

§ 97.1011 Timing requirements for CSAPR NO_X Ozone Season Group 3 allowance allocations.

(a) *Existing units.* (1) CSAPR NO_X Ozone Season Group 3 allowances are allocated, for the control periods in 2021 and each year thereafter, as provided in a notice of data availability issued by the Administrator. Providing an allocation to a unit in such notice does not constitute a determination that the unit is a CSAPR NO_X Ozone Season Group 3 unit, and not providing an allocation to a unit in such notice does

not constitute a determination that the unit is not a CSAPR NO_X Ozone Season Group 3 unit.

(2) Notwithstanding paragraph (a)(1) of this section, if a unit provided an allocation in the notice of data availability issued under paragraph (a)(1) of this section does not operate, starting after 2020, during the control period in two consecutive years, such unit will not be allocated the CSAPR NO_X Ozone Season Group 3 allowances provided in such notice for the unit for the control periods in the fifth year after the first such year and in each year after that fifth year. All CSAPR NO_X Ozone Season Group 3 allowances that would otherwise have been allocated to such unit will be allocated to the new unit set-aside for the State where such unit is located and for the respective years involved. If such unit resumes operation, the Administrator will allocate CSAPR NO_X Ozone Season Group 3 allowances to the unit in accordance with paragraph (b) of this section.

(3) For the control period in 2021 only, the Administrator will allocate to each unit to which CSAPR NO_X Ozone Season Group 3 allowances are allocated under paragraph (a)(1) of this section a share of the supplemental amount of CSAPR NO_X Ozone Season Group 3 allowances determined for the State in which the unit is located under § 97.1010(d), where each such unit's share will be computed as the difference between—

(i) The amount that would have been established as the unit's allocation for purposes of the notice of data availability referenced in paragraph (a)(1) of this section if the total amount of CSAPR NO_X Ozone Season Group 3 allowances being allocated to the units in the State for purposes of such notice were increased by the supplemental amount determined for the State under § 97.1010(d); and

(ii) The amount that was actually established as the unit's allocation for purposes of the notice of data availability referenced in paragraph (a)(1) of this section.

(b) *New units*—(1) *New unit set-asides.* (i)(A) By June 1, 2021 and June 1, 2022, the Administrator will calculate the CSAPR NO_X Ozone Season Group 3 allowance allocation to each CSAPR NO_X Ozone Season Group 3 unit in a State, in accordance with § 97.1012(a)(2) through (7) and (12), for the control period in the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(B) By March 1, 2024 and March 1 of each year thereafter, the Administrator will calculate the CSAPR NO_X Ozone Season Group 3 allowance allocation to each CSAPR NO_X Ozone Season Group 3 unit in a State, in accordance with § 97.1012(a)(2) through (7), (10), and (12), for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) For each notice of data availability required in paragraph (b)(1)(i) of this section, the Administrator will provide an opportunity for submission of objections to the calculations referenced in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(1)(i) of this section and shall be limited to addressing whether the calculations (including the identification of the CSAPR NO_X Ozone Season Group 3 units) are in accordance with § 97.1012(a)(2) through (7) and (12) for a control period before 2023, or § 97.1012(a)(2) through (7), (10), and (12) for a control period in 2023 or thereafter, and §§ 97.1006(b)(2) and 97.1030 through 97.1035.

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the applicable provisions referenced in paragraph (b)(1)(ii)(A) of this section. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(A) of this section for a control period before 2023, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(B) of this section for a control period in 2023 or thereafter, the Administrator will promulgate a notice of data availability of the calculations incorporating any adjustments that the Administrator determines to be necessary with regard to allocations under such applicable provisions and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(ii)(A) of this section.

(iii) If the new unit set-aside for a control period before 2023 contains any CSAPR NO_X Ozone Season Group 3 allowances that have not been allocated in the applicable notice of data availability required in paragraph (b)(1)(ii) of this section, the Administrator will promulgate, by December 15 immediately after such notice, a notice of data availability that identifies any CSAPR NO_X Ozone Season Group 3 units that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period.

(iv) For each notice of data availability required in paragraph (b)(1)(iii) of this section, the Administrator will provide an opportunity for submission of objections to the identification of CSAPR NO_X Ozone Season Group 3 units in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(1)(iii) of this section and shall be limited to addressing whether the identification of CSAPR NO_X Ozone Season Group 3 units in such notice is in accordance with paragraph (b)(1)(iii) of this section.

(B) The Administrator will adjust the identification of CSAPR NO_X Ozone Season Group 3 units in each notice of data availability required in paragraph (b)(1)(iii) of this section to the extent necessary to ensure that it is in accordance with paragraph (b)(1)(iii) of this section and will calculate the CSAPR NO_X Ozone Season Group 3 allowance allocation to each CSAPR NO_X Ozone Season Group 3 unit in accordance with § 97.1012(a)(9), (10), and (12) and §§ 97.1006(b)(2) and 97.1030 through 97.1035. By February 15 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(iii) of this section, the Administrator will promulgate a notice of data availability of any adjustments of the identification of CSAPR NO_X Ozone Season Group 3 units that the Administrator determines to be necessary, the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(iv)(A) of this section, and the results of such calculations.

(v) To the extent any CSAPR NO_X Ozone Season Group 3 allowances are added to the new unit set-aside after promulgation of each notice of data availability required in paragraph (b)(1)(iv) of this section for a control period before 2023, or in paragraph (b)(1)(ii) of this section for a control period in 2023 or thereafter, the Administrator will promulgate additional notices of data availability, as deemed appropriate, of the allocation of such CSAPR NO_X Ozone Season Group 3 allowances in accordance with § 97.1012(a)(10).

(2) *Indian country new unit set-asides.* (i)(A) By June 1, 2021 and June 1, 2022, the Administrator will calculate the CSAPR NO_X Ozone Season Group 3 allowance allocation to each CSAPR

NO_X Ozone Season Group 3 unit in Indian country within the borders of a State, in accordance with § 97.1012(b)(2) through (7) and (12), for the control period in the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(B) By March 1, 2024 and March 1 of each year thereafter, the Administrator will calculate the CSAPR NO_X Ozone Season Group 3 allowance allocation to each CSAPR NO_X Ozone Season Group 3 unit in a State, in accordance with § 97.1012(b)(2) through (7), (10), and (12), for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) For each notice of data availability required in paragraph (b)(2)(i) of this section, the Administrator will provide an opportunity for submission of objections to the calculations referenced in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(2)(i) of this section and shall be limited to addressing whether the calculations (including the identification of the CSAPR NO_X Ozone Season Group 3 units) are in accordance with § 97.1012(b)(2) through (7) and (12) for a control period before 2023, or § 97.1012(b)(2) through (7), (10), and (12) for a control period in 2023 or thereafter, and §§ 97.1006(b)(2) and 97.1030 through 97.1035.

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the applicable provisions referenced in paragraph (b)(2)(ii)(A) of this section. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(A) of this section for a control period before 2023, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(B) of this section for a control period in 2023 or thereafter, the Administrator will promulgate a notice of data availability of the calculations incorporating any adjustments that the Administrator determines to be necessary with regard to allocations under such applicable provisions and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(ii)(A) of this section.

(iii) If the Indian country new unit set-aside for a control period before 2023 contains any CSAPR NO_X Ozone Season Group 3 allowances that have not been allocated in the applicable notice of data availability required in paragraph (b)(2)(ii) of this section, the Administrator will promulgate, by December 15 immediately after such notice, a notice of data availability that identifies any CSAPR NO_X Ozone Season Group 3 units that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period.

(iv) For each notice of data availability required in paragraph (b)(2)(iii) of this section, the Administrator will provide an opportunity for submission of objections to the identification of CSAPR NO_X Ozone Season Group 3 units in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(2)(iii) of this section and shall be limited to addressing whether the identification of CSAPR NO_X Ozone Season Group 3 units in such notice is in accordance with paragraph (b)(2)(iii) of this section.

(B) The Administrator will adjust the identification of CSAPR NO_X Ozone Season Group 3 units in each notice of data availability required in paragraph (b)(2)(iii) of this section to the extent necessary to ensure that it is in accordance with paragraph (b)(2)(iii) of this section and will calculate the CSAPR NO_X Ozone Season Group 3 allowance allocation to each CSAPR NO_X Ozone Season Group 3 unit in accordance with § 97.1012(b)(9), (10), and (12) and §§ 97.1006(b)(2) and 97.1030 through 97.1035. By February 15 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(iii) of this section, the Administrator will promulgate a notice of data availability of any adjustments of the identification of CSAPR NO_X Ozone Season Group 3 units that the Administrator determines to be necessary, the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(iv)(A) of this section, and the results of such calculations.

(v) To the extent any CSAPR NO_X Ozone Season Group 3 allowances are added to the Indian country new unit set-aside after promulgation of each notice of data availability required in paragraph (b)(2)(iv) of this section for a control period before 2023, or in paragraph (b)(2)(ii) of this section for a control period in 2023 or thereafter, the Administrator will promulgate additional notices of data availability, as deemed appropriate, of the allocation of such CSAPR NO_X Ozone Season Group 3 allowances in accordance with § 97.1012(b)(10).

(c) *Units incorrectly allocated CSAPR NO_X Ozone Season Group 3 allowances.* (1) For each control period in 2021 and thereafter, if the Administrator determines that CSAPR NO_X Ozone Season Group 3 allowances were allocated under paragraph (a) of this section, or under a provision of a SIP revision approved under § 52.38(b)(10), (11), (12), or (13) of this chapter, where such control period and the recipient are covered by the provisions of paragraph (c)(1)(i) of this section or were allocated under § 97.1012(a)(2) through (7) and (12) and (b)(2) through (7) and (12), or under a provision of a SIP revision approved under § 52.38(b)(10), (12), or (13) of this chapter, where such control period and the recipient are covered by the provisions of paragraph (c)(1)(ii) of this section, then the Administrator will notify the designated representative of the recipient and will act in accordance with the procedures set forth in paragraphs (c)(2) through (5) of this section:

(i)(A) The recipient is not actually a CSAPR NO_X Ozone Season Group 3 unit under § 97.1004 as of May 1, 2021 and is allocated CSAPR NO_X Ozone Season Group 3 allowances for such control period or, in the case of an allocation under a provision of a SIP revision approved under § 52.38(b)(10), (11), (12), or (13) of this chapter, the recipient is not actually a CSAPR NO_X Ozone Season Group 3 unit as of May 1, 2021 and is allocated CSAPR NO_X Ozone Season Group 3 allowances for such control period that the SIP revision provides should be allocated only to recipients that are CSAPR NO_X Ozone Season Group 3 units as of May 1, 2021; or

(B) The recipient is not located as of May 1 of the control period in the State from whose NO_X Ozone Season Group 3 trading budget the CSAPR NO_X Ozone Season Group 3 allowances allocated under paragraph (a) of this section, or under a provision of a SIP revision approved under § 52.38(b)(10), (11), (12), or (13) of this chapter, were allocated for such control period.

(ii) The recipient is not actually a CSAPR NO_X Ozone Season Group 3 unit under § 97.1004 as of May 1 of such control period and is allocated CSAPR NO_X Ozone Season Group 3 allowances for such control period or, in the case of an allocation under a provision of a SIP revision approved under § 52.38(b)(10), (12), or (13) of this chapter, the recipient is not actually a

CSAPR NO_X Ozone Season Group 3 unit as of May 1 of such control period and is allocated CSAPR NO_X Ozone Season Group 3 allowances for such control period that the SIP revision provides should be allocated only to recipients that are CSAPR NO_X Ozone Season Group 3 units as of May 1 of such control period.

(2) Except as provided in paragraph (c)(3) or (4) of this section, the Administrator will not record such CSAPR NO_X Ozone Season Group 3 allowances under § 97.1021.

(3) If the Administrator already recorded such CSAPR NO_X Ozone Season Group 3 allowances under § 97.1021 and if the Administrator makes the determination under paragraph (c)(1) of this section before making deductions for the source that includes such recipient under § 97.1024(b) for such control period, then the Administrator will deduct from the account in which such CSAPR NO_X Ozone Season Group 3 allowances were recorded an amount of CSAPR NO_X Ozone Season Group 3 allowances allocated for the same or a prior control period equal to the amount of such already recorded CSAPR NO_X Ozone Season Group 3 allowances. The authorized account representative shall ensure that there are sufficient CSAPR NO_X Ozone Season Group 3 allowances in such account for completion of the deduction.

(4) If the Administrator already recorded such CSAPR NO_X Ozone Season Group 3 allowances under § 97.1021 and if the Administrator makes the determination under paragraph (c)(1) of this section after making deductions for the source that includes such recipient under § 97.1024(b) for such control period, then the Administrator will not make any deduction to take account of such already recorded CSAPR NO_X Ozone Season Group 3 allowances.

(5)(i) With regard to the CSAPR NO_X Ozone Season Group 3 allowances that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(i) of this section, the Administrator will:

(A) Transfer such CSAPR NO_X Ozone Season Group 3 allowances to the new unit set-aside for such control period (or a subsequent control period) for the State from whose NO_X Ozone Season Group 3 trading budget the CSAPR NO_X Ozone Season Group 3 allowances were allocated; or

(B) If the State has a SIP revision approved under § 52.38(b)(10), (12), or (13) of this chapter covering such control period, include such CSAPR NO_X Ozone Season Group 3 allowances in the portion of the State NO_X Ozone Season Group 3 trading budget that may be allocated for such control period (or a subsequent control period) in accordance with such SIP revision.

(ii) With regard to the CSAPR NO_X Ozone Season Group 3 allowances that were not allocated from the Indian country new unit set-aside for such control period and that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(ii) of this section, the Administrator will:

(A) Transfer such CSAPR NO_X Ozone Season Group 3 allowances to the new unit set-aside for such control period (or a subsequent control period); or

(B) If the State has a SIP revision approved under § 52.38(b)(10), (12), or (13) of this chapter covering such control period, include such CSAPR NO_X Ozone Season Group 3 allowances in the portion of the State NO_X Ozone Season Group 3 trading budget that may be allocated for such control period (or a subsequent control period) in accordance with such SIP revision.

(iii) With regard to the CSAPR NO_X Ozone Season Group 3 allowances that were allocated from the Indian country new unit set-aside for such control period and that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(ii) of this section, the Administrator will transfer such CSAPR NO_X Ozone Season Group 3 allowances to the Indian country new unit set-aside for such control period (or a subsequent control period).

§ 97.1012 CSAPR NO_X Ozone Season Group 3 allowance allocations to new units.

(a) *Allocations from new unit set-asides.* For each control period in 2021 and thereafter and for the CSAPR NO_X Ozone Season Group 3 units in each State, the Administrator will allocate CSAPR NO_X Ozone Season Group 3 allowances to the CSAPR NO_X Ozone Season Group 3 units as follows:

(1) The CSAPR NO_X Ozone Season Group 3 allowances will be allocated to the following CSAPR NO_X Ozone Season Group 3 units, except as provided in paragraph (a)(10) of this section:

(i) CSAPR NO_X Ozone Season Group 3 units that are not allocated an amount of CSAPR NO_X Ozone Season Group 3 allowances in the notice of data availability issued under § 97.1011(a)(1) and that have deadlines for certification of monitoring systems under § 97.1030(b) not later than September 30 of the year of the control period;

(ii) CSAPR NO_X Ozone Season Group 3 units whose allocation of an amount of CSAPR NO_X Ozone Season Group 3 allowances for such control period in the notice of data availability issued under § 97.1011(a)(1) is covered by § 97.1011(c)(2) or (3);

(iii) CSAPR NO_X Ozone Season Group 3 units that are allocated an amount of CSAPR NO_X Ozone Season Group 3 allowances for such control period in the notice of data availability issued under § 97.1011(a)(1), which allocation is terminated for such control period pursuant to § 97.1011(a)(2), and that operate during the control period immediately preceding such control period, for a control period before 2023, or that operate during such control period, for a control period in 2023 or thereafter; or

(iv) For purposes of paragraph (a)(9) of this section, CSAPR NO_X Ozone Season Group 3 units under § 97.1011(c)(1)(ii) whose allocation of an amount of CSAPR NO_X Ozone Season Group 3 allowances for such control period in the notice of data availability issued under § 97.1011(b)(1)(ii)(B) is covered by § 97.1011(c)(2) or (3).

(2) The Administrator will establish a separate new unit set-aside for the State for each such control period. Each such new unit set-aside will be allocated CSAPR NO_X Ozone Season Group 3 allowances in an amount equal to the applicable amount of tons of NO_X emissions as set forth in § 97.1010(a) and will be allocated additional CSAPR NO_X Ozone Season Group 3 allowances (if any) in accordance with § 97.1011(a)(2) and (c)(5) and paragraph (b)(10) of this section.

(3) The Administrator will determine, for each CSAPR NO_X Ozone Season Group 3 unit described in paragraph (a)(1) of this section, an allocation of CSAPR NO_X Ozone Season Group 3 allowances for the latest of the following control periods and for each subsequent control period:

(i) The control period in 2021;

(ii) The first control period after the control period containing the deadline for certification of the CSAPR NO_X Ozone Season Group 3 unit's monitoring systems under § 97.1030(b), for allocations for a control period before 2023, or the control period containing such deadline, for allocations for a control period in 2023 or thereafter;

(iii) For a unit described in paragraph (a)(1)(ii) of this section, the first control period in which the CSAPR NO_X Ozone Season Group 3 unit operates in the State after operating in another

jurisdiction and for which the unit is not already allocated one or more CSAPR NO_X Ozone Season Group 3 allowances; and

(iv) For a unit described in paragraph (a)(1)(iii) of this section, the first control period after the control period in which the unit resumes operation, for allocations for a control period before 2023, or the control period in which the unit resumes operation, for allocations for a control period in 2023 or thereafter.

(4) The allocation to each CSAPR NO_X Ozone Season Group 3 unit described in paragraphs (a)(1)(i) through (iii) of this section and for each control period described in paragraph (a)(3) of this section will be an amount equal to the unit's total tons of NO_X emissions during the immediately preceding control period, for a control period before 2023, or the unit's total tons of NO_X emissions during the control period, for a control period in 2023 or thereafter.

(ii) The Administrator will adjust the allocation amount in paragraph (a)(4)(i) of this section in accordance with paragraphs (a)(5) through (7) and (12) of this section.

(5) The Administrator will calculate the sum of the allocation amounts of CSAPR NO_X Ozone Season Group 3 allowances determined for all such CSAPR NO_X Ozone Season Group 3 units under paragraph (a)(4)(i) of this section in the State for such control period.

(6) If the amount of CSAPR NO_X Ozone Season Group 3 allowances in the new unit set-aside for the State for such control period is greater than or equal to the sum under paragraph (a)(5) of this section, then the Administrator will allocate the amount of CSAPR NO_X Ozone Season Group 3 allowances determined for each such CSAPR NO_X Ozone Season Group 3 unit under paragraph (a)(4)(i) of this section.

(7) If the amount of CSAPR NO_X Ozone Season Group 3 allowances in the new unit set-aside for the State for such control period is less than the sum under paragraph (a)(5) of this section, then the Administrator will allocate to each such CSAPR NO_X Ozone Season Group 3 unit the amount of the CSAPR NO_X Ozone Season Group 3 allowances determined under paragraph (a)(4)(i) of this section for the unit, multiplied by the amount of CSAPR NO_X Ozone Season Group 3 allowances in the new unit set-aside for such control period, divided by the sum under paragraph (a)(5) of this section, and rounded to the nearest allowance.

(8) For a control period before 2023 only, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.1011(b)(1)(i) and (ii), of the amount of CSAPR NO_X Ozone Season Group 3 allowances allocated under paragraphs (a)(2) through (7) and (12) of this section for such control period to each CSAPR NO_X Ozone Season Group 3 unit eligible for such allocation.

(9) For a control period before 2023 only, if, after completion of the procedures under paragraphs (a)(5) through (8) of this section for such control period, any unallocated CSAPR NO_X Ozone Season Group 3 allowances remain in the new unit set-aside for the State for such control period, the Administrator will allocate such CSAPR NO_X Ozone Season Group 3 allowances as follows—

(i) The Administrator will determine, for each unit described in paragraph (a)(1) of this section that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period, the positive difference (if any) between the unit's emissions during such control period and the amount of CSAPR NO_X Ozone Season Group 3 allowances referenced in the notice of data availability required under § 97.1011(b)(1)(ii) for the unit for such control period;

(ii) The Administrator will determine the sum of the positive differences determined under paragraph (a)(9)(i) of this section;

(iii) If the amount of unallocated CSAPR NO_X Ozone Season Group 3 allowances remaining in the new unit set-aside for the State for such control period is greater than or equal to the sum determined under paragraph (a)(9)(ii) of this section, then the Administrator will allocate the amount of CSAPR NO_X Ozone Season Group 3 allowances determined for each such CSAPR NO_X Ozone Season Group 3 unit under paragraph (a)(9)(i) of this section; and

(iv) If the amount of unallocated CSAPR NO_X Ozone Season Group 3 allowances remaining in the new unit set-aside for the State for such control period is less than the sum under paragraph (a)(9)(ii) of this section, then the Administrator will allocate to each such CSAPR NO_X Ozone Season Group 3 unit the amount of the CSAPR NO_X Ozone Season Group 3 allowances determined under paragraph (a)(9)(i) of this section for the unit, multiplied by the amount of unallocated CSAPR NO_X Ozone Season Group 3 allowances remaining in the new unit set-aside for such control period, divided by the sum under paragraph (a)(9)(ii) of this section, and rounded to the nearest allowance.

(10) If, after completion of the procedures under paragraphs (a)(9) and (12) of this section for a control period before 2023, or under paragraphs (a)(2) through (7) and (12) of this section for a control period in 2023 or thereafter, any unallocated CSAPR NO_X Ozone Season Group 3 allowances remain in the new unit set-aside for the State for such control period, the Administrator will allocate to each CSAPR NO_X Ozone Season Group 3 unit that is in the State, is allocated an amount of CSAPR NO_X Ozone Season Group 3 allowances in the notice of data availability issued under § 97.1011(a)(1), and continues to be allocated CSAPR NO_X Ozone Season Group 3 allowances for such control period in accordance with § 97.1011(a)(2), an amount of CSAPR NO_X Ozone Season Group 3 allowances equal to the following: The total amount of such remaining unallocated CSAPR NO_X Ozone Season Group 3 allowances in such new unit set-aside, multiplied by the unit's allocation under § 97.1011(a) for such control period, divided by the remainder of the amount of tons in the applicable State NO_X Ozone Season Group 3 trading budget minus the sum of the amounts of tons in such new unit set-aside and the Indian country new unit set-aside for the State for such control period, and rounded to the nearest allowance.

(11)(i) For a control period before 2023, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.1011(b)(1)(iii), (iv), and (v), of the amount of CSAPR NO_X Ozone Season Group 3 allowances allocated under paragraphs (a)(9), (10), and (12) of this section for such control period to each CSAPR NO_X Ozone Season Group 3 unit eligible for such allocation.

(ii) For a control period in 2023 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.1011(b)(1)(i), (ii), and (v), of the amount of CSAPR NO_X Ozone Season Group 3 allowances allocated under paragraphs (a)(2) through (7), (10), and (12) of this section for such control period to each CSAPR NO_X Ozone Season Group 3 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (a)(2) through (11) of this section, if the calculations of allocations from a new unit set-aside for a control period before 2023 under paragraph (a)(7) of this section, paragraphs (a)(6) and (a)(9)(iv) of this section, or paragraphs (a)(6), (a)(9)(iii), and (a)(10) of this section, or

for a control period in 2023 or thereafter under paragraph (a)(7) of this section or paragraphs (a)(6) and (10) of this section, would otherwise result in total allocations from such new unit set-aside unequal to the total amount of such new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR NO_X Ozone Season Group 3 units in descending order based on such units' allocation amounts under paragraph (a)(7), (a)(9)(iv), or (a)(10) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR NO_X Ozone Season Group 3 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such new unit set-aside equal the total amount of such new unit set-aside.

(b) *Allocations from Indian country new unit set-asides.* For each control period in 2021 and thereafter and for the CSAPR NO_X Ozone Season Group 3 units located in Indian country within the borders of each State, the Administrator will allocate CSAPR NO_X Ozone Season Group 3 allowances to the CSAPR NO_X Ozone Season Group 3 units as follows:

(1) The CSAPR NO_X Ozone Season Group 3 allowances will be allocated to the following CSAPR NO_X Ozone Season Group 3 units, except as provided in paragraph (b)(10) of this section:

(i) CSAPR NO_X Ozone Season Group 3 units that are not allocated an amount of CSAPR NO_X Ozone Season Group 3 allowances in the notice of data availability issued under § 97.1011(a)(1) and that have deadlines for certification of monitoring systems under § 97.1030(b) not later than September 30 of the year of the control period; or

(ii) For purposes of paragraph (b)(9) of this section, CSAPR NO_X Ozone Season Group 3 units under § 97.1011(c)(1)(ii) whose allocation of an amount of CSAPR NO_X Ozone Season Group 3 allowances for such control period in the notice of data availability issued under § 97.1011(b)(2)(ii)(B) is covered by § 97.1011(c)(2) or (3).

(2) The Administrator will establish a separate Indian country new unit set-aside for the State for each such control period. Each such Indian country new unit set-aside will be allocated CSAPR NO_X Ozone Season Group 3 allowances in an amount equal to the applicable amount of tons of NO_X emissions as set forth in § 97.1010(a) and will be allocated additional CSAPR NO_X Ozone Season Group 3 allowances (if any) in accordance with § 97.1011(c)(5).

(3) The Administrator will determine, for each CSAPR NO_X Ozone Season Group 3 unit described in paragraph (b)(1) of this section, an allocation of CSAPR NO_X Ozone Season Group 3 allowances for the later of the following control periods and for each subsequent control period:

(i) The control period in 2021; and

(ii) The first control period after the control period containing the deadline for certification of the CSAPR NO_X Ozone Season Group 3 unit's monitoring systems under § 97.1030(b), for allocations for a control period before 2023, or the control period containing such deadline, for allocations for a control period in 2023 or thereafter.

(4) The allocation to each CSAPR NO_X Ozone Season Group 3 unit described in paragraph (b)(1)(i) of this section and for each control period described in paragraph (b)(3) of this section will be an amount equal to the unit's total tons of NO_X emissions during the immediately preceding control period, for a control period before 2023, or the unit's total tons of NO_X emissions during the control period, for a control period in 2023 or thereafter.

(ii) The Administrator will adjust the allocation amount in paragraph (b)(4)(i) of this section in accordance with paragraphs (b)(5) through (7) and (12) of this section.

(5) The Administrator will calculate the sum of the allocation amounts of CSAPR NO_X Ozone Season Group 3 allowances determined for all such CSAPR NO_X Ozone Season Group 3 units under paragraph (b)(4)(i) of this section in Indian country within the borders of the State for such control period.

(6) If the amount of CSAPR NO_X Ozone Season Group 3 allowances in the Indian country new unit set-aside for the State for such control period is greater than or equal to the sum under paragraph (b)(5) of this section, then the Administrator will allocate the amount of CSAPR NO_X Ozone Season Group 3 allowances determined for each such CSAPR NO_X Ozone Season Group 3 unit under paragraph (b)(4)(i) of this section.

(7) If the amount of CSAPR NO_X Ozone Season Group 3 allowances in the Indian country new unit set-aside for the State for such control period is less than the sum under paragraph (b)(5) of this section, then the Administrator will allocate to each such CSAPR NO_X Ozone Season Group 3 unit the amount of the CSAPR NO_X Ozone Season Group 3 allowances determined under paragraph (b)(4)(i) of this section for the unit, multiplied by the amount of CSAPR NO_X Ozone Season Group 3 allowances in the Indian country new unit set-aside for such control period, divided by the sum under paragraph (b)(5) of this section, and rounded to the nearest allowance.

(8) For a control period before 2023 only, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.1011(b)(2)(i) and (ii), of the amount of CSAPR NO_X Ozone Season Group 3 allowances allocated under paragraphs (b)(2) through (7) and (12) of this section for such control period to each CSAPR NO_X Ozone Season Group 3 unit eligible for such allocation.

(9) For a control period before 2023 only, if, after completion of the procedures under paragraphs (b)(5) through (8) of this section for such control period, any unallocated CSAPR NO_X Ozone Season Group 3 allowances remain in the Indian country new unit set-aside for the State for such control period, the Administrator will allocate such CSAPR NO_X Ozone Season Group 3 allowances as follows—

(i) The Administrator will determine, for each unit described in paragraph (b)(1) of this section that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period, the positive difference (if any) between the unit's emissions during such control period and the amount of CSAPR NO_X Ozone Season Group 3 allowances referenced in the notice of data availability required under § 97.1011(b)(2)(ii) for the unit for such control period;

(ii) The Administrator will determine the sum of the positive differences determined under paragraph (b)(9)(i) of this section;

(iii) If the amount of unallocated CSAPR NO_X Ozone Season Group 3 allowances remaining in the Indian country new unit set-aside for the State for such control period is greater than or equal to the sum determined under paragraph (b)(9)(ii) of this section, then the Administrator will allocate the amount of CSAPR NO_X Ozone Season Group 3 allowances determined for each such CSAPR NO_X Ozone Season Group 3 unit under paragraph (b)(9)(i) of this section; and

(iv) If the amount of unallocated CSAPR NO_X Ozone Season Group 3 allowances remaining in the Indian country new unit set-aside for the State

for such control period is less than the sum under paragraph (b)(9)(ii) of this section, then the Administrator will allocate to each such CSAPR NO_X Ozone Season Group 3 unit the amount of the CSAPR NO_X Ozone Season Group 3 allowances determined under paragraph (b)(9)(i) of this section for the unit, multiplied by the amount of unallocated CSAPR NO_X Ozone Season Group 3 allowances remaining in the Indian country new unit set-aside for such control period, divided by the sum under paragraph (b)(9)(ii) of this section, and rounded to the nearest allowance.

(10) If, after completion of the procedures under paragraphs (b)(9) and (12) of this section for a control period before 2023, or under paragraphs (b)(2) through (7) and (12) of this section for a control period in 2023 or thereafter, any unallocated CSAPR NO_X Ozone Season Group 3 allowances remain in the Indian country new unit set-aside for the State for such control period, the Administrator will:

(i) Transfer such unallocated CSAPR NO_X Ozone Season Group 3 allowances to the new unit set-aside for the State for such control period; or

(ii) If the State has a SIP revision approved under § 52.38(b)(10), (12), or (13) of this chapter covering such control period, include such unallocated CSAPR NO_X Ozone Season Group 3 allowances in the portion of the State NO_X Ozone Season Group 3 trading budget that may be allocated for such control period in accordance with such SIP revision.

(11)(i) For a control period before 2023, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.1011(b)(2)(iii), (iv), and (v), of the amount of CSAPR NO_X Ozone Season Group 3 allowances allocated under paragraphs (b)(9), (10), and (12) of this section for such control period to each CSAPR NO_X Ozone Season Group 3 unit eligible for such allocation.

(ii) For a control period in 2023 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.1011(b)(2)(i), (ii), and (v), of the amount of CSAPR NO_X Ozone Season Group 3 allowances allocated under paragraphs (b)(2) through (7), (10), and (12) of this section for such control period to each CSAPR NO_X Ozone Season Group 3 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (b)(2) through (11) of this section, if the calculations of allocations from an Indian country new unit set-aside for a control period before 2023 under paragraph (b)(7) of this section or paragraphs (b)(6) and (b)(9)(iv) of this section, or for a control period in 2023 or thereafter under paragraph (b)(7) of this section, would otherwise result in total allocations from such Indian country new unit set-aside unequal to the total amount of such Indian country new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR NO_X Ozone Season Group 3 units in descending order based on such units' allocation amounts under paragraph (b)(7) or (b)(9)(iv) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR NO_X Ozone Season Group 3 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such Indian country new unit set-aside equal the total amount of such Indian country new unit set-aside.

§ 97.1013 Authorization of designated representative and alternate designated representative.

(a) Except as provided under § 97.1015, each CSAPR NO_X Ozone Season Group 3 source, including all CSAPR NO_X Ozone Season Group 3 units at the source, shall have one and only one designated representative, with regard to all matters under the CSAPR NO_X Ozone Season Group 3 Trading Program.

(1) The designated representative shall be selected by an agreement binding on the owners and operators of the source and all CSAPR NO_X Ozone Season Group 3 units at the source and shall act in accordance with the certification statement in § 97.1016(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under § 97.1016:

(i) The designated representative shall be authorized and shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the source and each CSAPR NO_X Ozone Season Group 3 unit at the source in all matters pertaining to the CSAPR NO_X Ozone Season Group 3 Trading Program, notwithstanding any agreement between the designated representative and such owners and operators; and

(ii) The owners and operators of the source and each CSAPR NO_X Ozone Season Group 3 unit at the source shall be bound by any decision or order issued to the designated representative by the Administrator regarding the source or any such unit.

(b) Except as provided under § 97.1015, each CSAPR NO_X Ozone Season Group 3 source may have one and only one alternate designated representative, who may act on behalf of the designated representative. The agreement by which the alternate designated representative is selected shall include a procedure for authorizing the alternate designated representative to act in lieu of the designated representative.

(1) The alternate designated representative shall be selected by an agreement binding on the owners and operators of the source and all CSAPR NO_X Ozone Season Group 3 units at the source and shall act in accordance with the certification statement in § 97.1016(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under § 97.1016,

(i) The alternate designated representative shall be authorized;

(ii) Any representation, action, inaction, or submission by the alternate designated representative shall be deemed to be a representation, action, inaction, or submission by the designated representative; and

(iii) The owners and operators of the source and each CSAPR NO_X Ozone Season Group 3 unit at the source shall be bound by any decision or order issued to the alternate designated representative by the Administrator regarding the source or any such unit.

(c) Except in this section, § 97.1002, and §§ 97.1014 through 97.1018, whenever the term ''designated representative'' (as distinguished from the term ''common designated representative'') is used in this subpart, the term shall be construed to include the designated representative or any alternate designated representative.

§ 97.1014 Responsibilities of designated representative and alternate designated representative.

(a) Except as provided under § 97.1018 concerning delegation of authority to make submissions, each submission under the CSAPR NO_X Ozone Season Group 3 Trading Program shall be made, signed, and certified by the designated representative or alternate designated representative for each CSAPR NO_X Ozone Season Group 3 source and CSAPR NO_X Ozone Season Group 3 unit for which the submission

is made. Each such submission shall include the following certification statement by the designated representative or alternate designated representative: ''I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(b) The Administrator will accept or act on a submission made for a CSAPR NO_X Ozone Season Group 3 source or a CSAPR NO_X Ozone Season Group 3 unit only if the submission has been made, signed, and certified in accordance with paragraph (a) of this section and § 97.1018.

§ 97.1015 Changing designated representative and alternate designated representative; changes in owners and operators; changes in units at the source.

(a) *Changing designated representative.* The designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.1016. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new designated representative and the owners and operators of the CSAPR NO_X Ozone Season Group 3 source and the CSAPR NO_X Ozone Season Group 3 units at the source.

(b) *Changing alternate designated representative.* The alternate designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.1016. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate designated representative, the designated representative, and the owners and operators of the CSAPR NO_X Ozone Season Group 3 source and the CSAPR NO_X Ozone Season Group 3 units at the source.

(c) *Changes in owners and operators.* (1) In the event an owner or operator of a CSAPR NO_X Ozone Season Group 3 source or a CSAPR NO_X Ozone Season Group 3 unit at the source is not included in the list of owners and operators in the certificate of representation under § 97.1016, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the designated representative and any alternate designated representative of the source or unit, and the decisions and orders of the Administrator, as if the owner or operator were included in such list.

(2) Within 30 days after any change in the owners and operators of a CSAPR NO_X Ozone Season Group 3 source or a CSAPR NO_X Ozone Season Group 3 unit at the source, including the addition or removal of an owner or operator, the designated representative or any alternate designated representative shall submit a revision to the certificate of representation under § 97.1016 amending the list of owners and operators to reflect the change.

(d) *Changes in units at the source.* Within 30 days of any change in which units are located at a CSAPR NO_X Ozone Season Group 3 source (including the addition or removal of a unit), the designated representative or any alternate designated representative shall submit a certificate of representation under § 97.1016 amending the list of units to reflect the change.

(1) If the change is the addition of a unit that operated (other than for purposes of testing by the manufacturer before initial installation) before being located at the source, then the certificate of representation shall identify, in a format prescribed by the Administrator, the entity from whom the unit was purchased or otherwise obtained (including name, address, telephone number, and facsimile number (if any)), the date on which the unit was purchased or otherwise obtained, and the date on which the unit became located at the source.

(2) If the change is the removal of a unit, then the certificate of representation shall identify, in a format prescribed by the Administrator, the entity to which the unit was sold or that otherwise obtained the unit (including name, address, telephone number, and facsimile number (if any)), the date on which the unit was sold or otherwise obtained, and the date on which the unit became no longer located at the source.

§ 97.1016 Certificate of representation.

(a) A complete certificate of representation for a designated representative or an alternate designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the CSAPR NO_X Ozone Season Group 3 source, and each CSAPR NO_X Ozone Season Group 3 unit at the source, for which the certificate of representation is submitted, including source name, source category and NAICS code (or, in the absence of a NAICS code, an equivalent code), State, plant code, county, latitude and longitude, unit identification number and type, identification number and nameplate capacity (in MWe, rounded to the nearest tenth) of each generator served by each such unit, actual or projected date of commencement of commercial operation, and a statement of whether such source is located in Indian country. If a projected date of commencement of commercial operation is provided, the actual date of commencement of commercial operation shall be provided when such information becomes available.

(2) The name, address, email address (if any), telephone number, and facsimile transmission number (if any) of the designated representative and any alternate designated representative.

(3) A list of the owners and operators of the CSAPR NO_X Ozone Season Group 3 source and of each CSAPR NO_X Ozone Season Group 3 unit at the source.

(4) The following certification statements by the designated representative and any alternate designated representative—

(i) ''I certify that I was selected as the designated representative or alternate designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CSAPR NO_X Ozone Season Group 3 unit at the source.''

(ii) ''I certify that I have all the necessary authority to carry out my duties and responsibilities under the CSAPR NO_X Ozone Season Group 3 Trading Program on behalf of the owners and operators of the source and of each CSAPR NO_X Ozone Season Group 3 unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Administrator regarding the source or unit.''

(iii) ''Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CSAPR NO_X Ozone Season Group 3 unit, or where a utility or industrial customer purchases power from a CSAPR NO_X Ozone Season Group 3 unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'designated representative' or 'alternate designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CSAPR NO_X Ozone Season Group 3 unit at the source; and CSAPR NO_X Ozone Season Group 3 allowances and proceeds of transactions involving CSAPR NO_X Ozone Season Group 3 allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CSAPR NO_X Ozone Season Group 3 allowances by contract, CSAPR NO_X Ozone Season Group 3 allowances and proceeds of transactions involving CSAPR NO_X Ozone Season Group 3 allowances will be deemed to be held or distributed in accordance with the contract.''

(5) The signature of the designated representative and any alternate designated representative and the dates signed.

(b) Unless otherwise required by the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(c) A certificate of representation under this section, § 97.516, or § 97.816 that complies with the provisions of paragraph (a) of this section except that it contains the phrase ''TR NO_X Ozone Season'', the phrase ''CSAPR NO_X Ozone Season Group 1'', or the phrase ''CSAPR NO_X Ozone Season Group 2'' in place of the phrase ''CSAPR NO_X Ozone Season Group 3'' in the required certification statements will be considered a complete certificate of representation under this section, and the certification statements included in such certificate of representation will be interpreted for purposes of this subpart as if the phrase ''CSAPR NO_X Ozone Season Group 3'' appeared in place of the phrase ''TR NO_X Ozone Season'', the phrase ''CSAPR NO_X Ozone Season Group 1'', or the phrase ''CSAPR NO_X Ozone Season Group 2''.

§ 97.1017 Objections concerning designated representative and alternate designated representative.

(a) Once a complete certificate of representation under § 97.1016 has been submitted and received, the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 97.1016 is received by the Administrator.

(b) Except as provided in paragraph (a) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission, of a designated representative or alternate designated representative shall affect any representation, action, inaction, or submission of the designated representative or alternate designated representative or the finality of any decision or order by the Administrator under the CSAPR NO_X Ozone Season Group 3 Trading Program.

(c) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any designated representative or alternate designated representative, including private legal disputes concerning the proceeds of CSAPR NO_X Ozone Season Group 3 allowance transfers.

§ 97.1018 Delegation by designated representative and alternate designated representative.

(a) A designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this subpart.

(b) An alternate designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this subpart.

(c) In order to delegate authority to a natural person to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the designated representative or alternate designated representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(1) The name, address, email address, telephone number, and facsimile transmission number (if any) of such designated representative or alternate designated representative;

(2) The name, address, email address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to in this section as an ''agent'');

(3) For each such natural person, a list of the type or types of electronic submissions under paragraph (a) or (b) of this section for which authority is delegated to him or her; and

(4) The following certification statements by such designated representative or alternate designated representative:

(i) ''I agree that any electronic submission to the Administrator that is made by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a designated representative or alternate designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.1018(d) shall be deemed to be an electronic submission by me.''

(ii) ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.1018(d), I agree to maintain an email account and to notify the Administrator immediately of any change in my email address unless all delegation of authority by me under 40 CFR 97.1018 is terminated.''.

(d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the designated representative or alternate designated representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such designated representative or alternate designated representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(e) Any electronic submission covered by the certification in paragraph (c)(4)(i) of this section and made in accordance with a notice of delegation effective under paragraph (d) of this section shall be deemed to be an electronic submission by the designated representative or alternate designated representative submitting such notice of delegation.

(f) A notice of delegation submitted under paragraph (c) of this section, § 97.518(c), or § 97.818(c) that complies with the provisions of paragraph (c) of this section except that it contains the terms ''40 CFR 97.518(d)'' and ''40 CFR 97.518'' or the terms ''40 CFR 97.818(d)'' and ''40 CFR 97.818'' in

place of the terms ''40 CFR 97.1018(d)'' and ''40 CFR 97.1018'', respectively, in the required certification statements will be considered a valid notice of delegation submitted under paragraph (c) of this section, and the certification statements included in such notice of delegation will be interpreted for purposes of this subpart as if the terms ''40 CFR 97.1018(d)'' and ''40 CFR 97.1018'' appeared in place of the terms ''40 CFR 97.518(d)'' and ''40 CFR 97.518'' or the terms ''40 CFR 97.818(d)'' and ''40 CFR 97.818'', respectively.

§ 97.1019 [Reserved]

§ 97.1020 Establishment of compliance accounts, assurance accounts, and general accounts.

(a) *Compliance accounts.* Upon receipt of a complete certificate of representation under § 97.1016, the Administrator will establish a compliance account for the CSAPR NO_X Ozone Season Group 3 source for which the certificate of representation was submitted, unless the source already has a compliance account. The designated representative and any alternate designated representative of the source shall be the authorized account representative and the alternate authorized account representative respectively of the compliance account.

(b) *Assurance accounts.* The Administrator will establish assurance accounts for certain owners and operators and States in accordance with § 97.1025(b)(3).

(c) *General accounts*—(1) *Application for general account.* (i) Any person may apply to open a general account, for the purpose of holding and transferring CSAPR NO_X Ozone Season Group 3 allowances, by submitting to the Administrator a complete application for a general account. Such application shall designate one and only one authorized account representative and may designate one and only one alternate authorized account representative who may act on behalf of the authorized account representative.

(A) The authorized account representative and alternate authorized account representative shall be selected by an agreement binding on the persons who have an ownership interest with respect to CSAPR NO_X Ozone Season Group 3 allowances held in the general account.

(B) The agreement by which the alternate authorized account representative is selected shall include a procedure for authorizing the alternate authorized account representative to act in lieu of the authorized account representative.

(ii) A complete application for a general account shall include the following elements in a format prescribed by the Administrator:

(A) Name, mailing address, email address (if any), telephone number, and facsimile transmission number (if any) of the authorized account representative and any alternate authorized account representative;

(B) An identifying name for the general account;

(C) A list of all persons subject to a binding agreement for the authorized account representative and any alternate authorized account representative to represent their ownership interest with respect to the CSAPR NO_X Ozone Season Group 3 allowances held in the general account;

(D) The following certification statement by the authorized account representative and any alternate authorized account representative: ''I certify that I was selected as the authorized account representative or the alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CSAPR NO_X Ozone Season Group 3 allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CSAPR NO_X Ozone Season Group 3 Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Administrator regarding the general account.''

(E) The signature of the authorized account representative and any alternate authorized account representative and the dates signed.

(iii) Unless otherwise required by the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(iv) An application for a general account under paragraph (c)(1) of this section, § 97.520(c)(1), or § 97.820(c)(1) that complies with the provisions of paragraph (c)(1) of this section except that it contains the phrase ''TR NO_X Ozone Season'', ''CSAPR NO_X Ozone Season Group 1'', or ''CSAPR NO_X Ozone Season Group 2'' in place of the phrase ''CSAPR NO_X Ozone Season Group 3'' in the required certification statement will be considered a complete application for a general account under paragraph (c)(1) of this section, and the certification statement included in such application for a general account will be interpreted for purposes of this subpart as if the phrase ''CSAPR NO_X Ozone Season Group 3'' appeared in place of the phrase ''TR NO_X Ozone Season'', ''CSAPR NO_X Ozone Season Group 1'', or ''CSAPR NO_X Ozone Season Group 2''.

(2) *Authorization of authorized account representative and alternate authorized account representative.* (i) Upon receipt by the Administrator of a complete application for a general account under paragraph (c)(1) of this section, the Administrator will establish a general account for the person or persons for whom the application is submitted, and upon and after such receipt by the Administrator:

(A) The authorized account representative of the general account shall be authorized and shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CSAPR NO_X Ozone Season Group 3 allowances held in the general account in all matters pertaining to the CSAPR NO_X Ozone Season Group 3 Trading Program, notwithstanding any agreement between the authorized account representative and such person.

(B) Any alternate authorized account representative shall be authorized, and any representation, action, inaction, or submission by any alternate authorized account representative shall be deemed to be a representation, action, inaction, or submission by the authorized account representative.

(C) Each person who has an ownership interest with respect to CSAPR NO_X Ozone Season Group 3 allowances held in the general account shall be bound by any decision or order issued to the authorized account representative or alternate authorized account representative by the Administrator regarding the general account.

(ii) Except as provided in paragraph (c)(5) of this section concerning delegation of authority to make submissions, each submission concerning the general account shall be made, signed, and certified by the authorized account representative or any alternate authorized account representative for the persons having an ownership interest with respect to CSAPR NO_X Ozone Season Group 3 allowances held in the general account. Each such submission shall include the following certification statement by the authorized account representative or any alternate authorized account representative: ''I am authorized to

make this submission on behalf of the persons having an ownership interest with respect to the CSAPR NO_X Ozone Season Group 3 allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(iii) Except in this section, whenever the term ''authorized account representative'' is used in this subpart, the term shall be construed to include the authorized account representative or any alternate authorized account representative.

(iv) A certification statement submitted in accordance with paragraph (c)(2)(ii) of this section that contains the phrase ''TR NO_X Ozone Season'' will be interpreted for purposes of this subpart as if the phrase ''CSAPR NO_X Ozone Season Group 2'' appeared in place of the phrase ''TR NO_X Ozone Season''.

(3) *Changing authorized account representative and alternate authorized account representative; changes in persons with ownership interest.* (i) The authorized account representative of a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (c)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new authorized account representative and the persons with an ownership interest with respect to the CSAPR NO_X Ozone Season Group 3 allowances in the general account.

(ii) The alternate authorized account representative of a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (c)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate authorized account representative, the authorized account representative, and the persons with an ownership interest with respect to the CSAPR NO_X Ozone Season Group 3 allowances in the general account.

(iii)(A) In the event a person having an ownership interest with respect to CSAPR NO_X Ozone Season Group 3 allowances in the general account is not included in the list of such persons in the application for a general account, such person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the authorized account representative and any alternate authorized account representative of the account, and the decisions and orders of the Administrator, as if the person were included in such list.

(B) Within 30 days after any change in the persons having an ownership interest with respect to CSAPR NO_X Ozone Season Group 3 allowances in the general account, including the addition or removal of a person, the authorized account representative or any alternate authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CSAPR NO_X Ozone Season Group 3 allowances in the general account to include the change.

(4) *Objections concerning authorized account representative and alternate authorized account representative.* (i) Once a complete application for a general account under paragraph (c)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (c)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (c)(4)(i) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative of a general account shall affect any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative or the finality of any decision or order by the Administrator under the CSAPR NO_X Ozone Season Group 3 Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative of a general account, including private legal disputes concerning the proceeds of CSAPR NO_X Ozone Season Group 3 allowance transfers.

(5) *Delegation by authorized account representative and alternate authorized account representative.* (i) An authorized account representative of a general account may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this subpart.

(ii) An alternate authorized account representative of a general account may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this subpart.

(iii) In order to delegate authority to a natural person to make an electronic submission to the Administrator in accordance with paragraph (c)(5)(i) or (ii) of this section, the authorized account representative or alternate authorized account representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(A) The name, address, email address, telephone number, and facsimile transmission number (if any) of such authorized account representative or alternate authorized account representative;

(B) The name, address, email address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to in this section as an ''agent'');

(C) For each such natural person, a list of the type or types of electronic submissions under paragraph (c)(5)(i) or (ii) of this section for which authority is delegated to him or her;

(D) The following certification statement by such authorized account representative or alternate authorized account representative: ''I agree that any electronic submission to the Administrator that is made by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am an authorized account representative or alternate authorized account representative, as appropriate, and before this notice of delegation is

superseded by another notice of delegation under 40 CFR 97.1020(c)(5)(iv) shall be deemed to be an electronic submission by me.''; and

(E) The following certification statement by such authorized account representative or alternate authorized account representative: ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.1020(c)(5)(iv), I agree to maintain an email account and to notify the Administrator immediately of any change in my email address unless all delegation of authority by me under 40 CFR 97.1020(c)(5) is terminated.''.

(iv) A notice of delegation submitted under paragraph (c)(5)(iii) of this section shall be effective, with regard to the authorized account representative or alternate authorized account representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such authorized account representative or alternate authorized account representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(v) Any electronic submission covered by the certification in paragraph (c)(5)(iii)(D) of this section and made in accordance with a notice of delegation effective under paragraph (c)(5)(iv) of this section shall be deemed to be an electronic submission by the authorized account representative or alternate authorized account representative submitting such notice of delegation.

(vi) A notice of delegation submitted under paragraph (c)(5)(iii) of this section, § 97.520(c)(5)(iii), or § 97.820(c)(5)(iii) that complies with the provisions of paragraph (c)(5)(iii) of this section except that it contains the terms ''40 CFR 97.520(c)(5)(iv)'' and ''40 CFR 97.520(c)(5)'' or the terms ''40 CFR 97.820(c)(5)(iv)'' and ''40 CFR 97.820(c)(5)'' in place of the terms ''40 CFR 97.1020(c)(5)(iv)'' and ''40 CFR 97.1020(c)(5)'', respectively, in the required certification statements will be considered a valid notice of delegation submitted under paragraph (c)(5)(iii) of this section, and the certification statements included in such notice of delegation will be interpreted for purposes of this subpart as if the terms ''40 CFR 97.1020(c)(5)(iv)'' and ''40 CFR 97.1020(c)(5)'' appeared in place of the terms ''40 CFR 97.520(c)(5)(iv)'' and ''40 CFR 97.520(c)(5)'' or the terms ''40 CFR 97.820(c)(5)(iv)'' and ''40 CFR 97.820(c)(5)'', respectively.

(6) *Closing a general account.* (i) The authorized account representative or alternate authorized account representative of a general account may submit to the Administrator a request to close the account. Such request shall include a correctly submitted CSAPR NO_X Ozone Season Group 3 allowance transfer under § 97.1022 for any CSAPR NO_X Ozone Season Group 3 allowances in the account to one or more other Allowance Management System accounts.

(ii) If a general account has no CSAPR NO_X Ozone Season Group 3 allowance transfers to or from the account for a 12-month period or longer and does not contain any CSAPR NO_X Ozone Season Group 3 allowances, the Administrator may notify the authorized account representative for the account that the account will be closed after 30 days after the notice is sent. The account will be closed after the 30-day period unless, before the end of the 30-day period, the Administrator receives a correctly submitted CSAPR NO_X Ozone Season Group 3 allowance transfer under § 97.1022 to the account or a statement submitted by the authorized account representative or alternate authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

(d) *Account identification.* The Administrator will assign a unique identifying number to each account established under paragraph (a), (b), or (c) of this section.

(e) *Responsibilities of authorized account representative and alternate authorized account representative.* After the establishment of a compliance account or general account, the Administrator will accept or act on a submission pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CSAPR NO_X Ozone Season Group 3 allowances in the account, only if the submission has been made, signed, and certified in accordance with §§ 97.1014(a) and 97.1018 or paragraphs (c)(2)(ii) and (c)(5) of this section.

§ 97.1021 Recordation of CSAPR NO_X Ozone Season Group 3 allowance allocations and auction results.

(a) By [DATE 120 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], the Administrator will record in each CSAPR NO_X Ozone Season Group 3 source's compliance account the CSAPR NO_X Ozone Season Group 3 allowances allocated to the CSAPR NO_X Ozone Season Group 3 units at the source in accordance with § 97.1011(a) for the control period in 2021.

(b) By [DATE 120 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], the Administrator will record in each CSAPR NO_X Ozone Season Group 3 source's compliance account the CSAPR NO_X Ozone Season Group 3 allowances allocated to the CSAPR NO_X Ozone Season Group 3 units at the source in accordance with § 97.1011(a) for the control period in 2022, unless the State in which the source is located notifies the Administrator in writing by [DATE 90 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] of the State's intent to submit to the Administrator a complete SIP revision by [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] meeting the requirements of § 52.38(b)(11)(i) through (iv) of this chapter.

(1) If, by [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] the State does not submit to the Administrator such complete SIP revision, the Administrator will record by [DATE 210 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] in each CSAPR NO_X Ozone Season Group 3 source's compliance account the CSAPR NO_X Ozone Season Group 3 allowances allocated to the CSAPR NO_X Ozone Season Group 3 units at the source in accordance with § 97.1011(a) for the control period in 2022.

(2) If the State submits to the Administrator by [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] and the Administrator approves by [DATE ONE YEAR AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] such complete SIP revision, the Administrator will record by [DATE ONE YEAR AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] in each CSAPR NO_X Ozone Season Group 3 source's compliance account the CSAPR NO_X Ozone Season Group 3 allowances allocated to the CSAPR NO_X Ozone Season Group 3 units at the source as provided in such approved, complete SIP revision for the control period in 2022.

(3) If the State submits to the Administrator by [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] and the Administrator does not approve by [DATE ONE YEAR AFTER DATE OF PUBLICATION OF

THE FINAL RULE IN THE **FEDERAL REGISTER**] such complete SIP revision, the Administrator will record by [DATE ONE YEAR AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] in each CSAPR NO_X Ozone Season Group 3 source's compliance account the CSAPR NO_X Ozone Season Group 3 allowances allocated to the CSAPR NO_X Ozone Season Group 3 units at the source in accordance with § 97.1011(a) for the control period in 2022.

(c) By July 1, 2022, the Administrator will record in each CSAPR NO_X Ozone Season Group 3 source's compliance account the CSAPR NO_X Ozone Season Group 3 allowances allocated to the CSAPR NO_X Ozone Season Group 3 units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Ozone Season Group 3 allowances auctioned to CSAPR NO_X Ozone Season Group 3 units, in accordance with § 97.1011(a), or with a SIP revision approved under § 52.38(b)(10), (12), or (13) of this chapter, for the control periods in 2023 and 2024.

(d) By July 1, 2023, the Administrator will record in each CSAPR NO_X Ozone Season Group 3 source's compliance account the CSAPR NO_X Ozone Season Group 3 allowances allocated to the CSAPR NO_X Ozone Season Group 3 units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Ozone Season Group 3 allowances auctioned to CSAPR NO_X Ozone Season Group 3 units, in accordance with § 97.1011(a), or with a SIP revision approved under § 52.38(b)(10), (12), or (13) of this chapter, for the control periods in 2025 and 2026.

(e) [Reserved]

(f) By July 1, 2024 and July 1 of each year thereafter, the Administrator will record in each CSAPR NO_X Ozone Season Group 3 source's compliance account the CSAPR NO_X Ozone Season Group 3 allowances allocated to the CSAPR NO_X Ozone Season Group 3 units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Ozone Season Group 3 allowances auctioned to CSAPR NO_X Ozone Season Group 3 units, in accordance with § 97.1011(a), or with a SIP revision approved under § 52.38(b)(10), (12), or (13) of this chapter, for the control period in the third year after the year of the applicable recordation deadline under this paragraph.

(g)(1) By [DATE 120 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] and August 1, 2022, the Administrator will record in each CSAPR NO_X Ozone Season Group 3 source's compliance account the CSAPR NO_X Ozone Season Group 3 allowances allocated to the CSAPR NO_X Ozone Season Group 3 units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Ozone Season Group 3 allowances auctioned to CSAPR NO_X Ozone Season Group 3 units, in accordance with § 97.1012(a)(2) through (8) and (12), or with a SIP revision approved under § 52.38(b)(10), (12), or (13) of this chapter, for the control period in the year of the applicable recordation deadline under this paragraph.

(2) By May 1, 2024 and May 1 of each year thereafter, the Administrator will record in each CSAPR NO_X Ozone Season Group 3 source's compliance account the CSAPR NO_X Ozone Season Group 3 allowances allocated to the CSAPR NO_X Ozone Season Group 3 units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Ozone Season Group 3 allowances auctioned to CSAPR NO_X Ozone Season Group 3 units, in accordance with § 97.1012(a)(2) through (12), or with a SIP revision approved under § 52.38(b)(10), (12), or (13) of this chapter, for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(h)(1) By [DATE 120 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] and August 1, 2022, the Administrator will record in each CSAPR NO_X Ozone Season Group 3 source's compliance account the CSAPR NO_X Ozone Season Group 3 allowances allocated to the CSAPR NO_X Ozone Season Group 3 units at the source in accordance with § 97.1012(b)(2) through (8) and (12) for the control period in the year of the applicable recordation deadline under this paragraph.

(2) By May 1, 2024 and May 1 of each year thereafter, the Administrator will record in each CSAPR NO_X Ozone Season Group 3 source's compliance account the CSAPR NO_X Ozone Season Group 3 allowances allocated to the CSAPR NO_X Ozone Season Group 3 units at the source in accordance with § 97.1012(b)(2) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(i) By February 15, 2022 and February 15, 2023, the Administrator will record in each CSAPR NO_X Ozone Season Group 3 source's compliance account the CSAPR NO_X Ozone Season Group 3 allowances allocated to the CSAPR NO_X Ozone Season Group 3 units at the source in accordance with § 97.1012(a)(9) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(j) By February 15, 2022 and February 15, 2023, the Administrator will record in each CSAPR NO_X Ozone Season Group 3 source's compliance account the CSAPR NO_X Ozone Season Group 3 allowances allocated to the CSAPR NO_X Ozone Season Group 3 units at the source in accordance with § 97.1012(b)(9) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(k) By the date 15 days after the date on which any allocation or auction results, other than an allocation or auction results described in paragraphs (a) through (j) of this section, of CSAPR NO_X Ozone Season Group 3 allowances to a recipient is made by or are submitted to the Administrator in accordance with § 97.1011 or § 97.1012 or with a SIP revision approved under § 52.38(b)(10), (12), or (13) of this chapter, the Administrator will record such allocation or auction results in the appropriate Allowance Management System account.

(l) When recording the allocation or auction of CSAPR NO_X Ozone Season Group 3 allowances to a CSAPR NO_X Ozone Season Group 3 unit or other entity in an Allowance Management System account, the Administrator will assign each CSAPR NO_X Ozone Season Group 3 allowance a unique identification number that will include digits identifying the year of the control period for which the CSAPR NO_X Ozone Season Group 3 allowance is allocated or auctioned.

(m) Notwithstanding any other provision of this subpart, the Administrator will not record in any CSAPR NO_X Ozone Season Group 3 source's compliance account any CSAPR NO_X Ozone Season Group 3 allowances allocated to any unit at the source, and will not record in any other entity's general account any CSAPR NO_X Ozone Season Group 3 allowances allocated to the entity, until the Administrator has completed for the source or entity the deductions of CSAPR NO_X Ozone Season Group 2 allowances required under § 97.811(d).

§ 97.1022 Submission of CSAPR NO_X Ozone Season Group 3 allowance transfers.

(a) An authorized account representative seeking recordation of a CSAPR NO_X Ozone Season Group 3 allowance transfer shall submit the transfer to the Administrator.

(b) A CSAPR NO_X Ozone Season Group 3 allowance transfer shall be correctly submitted if:

(1) The transfer includes the following elements, in a format prescribed by the Administrator:

(i) The account numbers established by the Administrator for both the transferor and transferee accounts;

(ii) The serial number of each CSAPR NO_X Ozone Season Group 3 allowance that is in the transferor account and is to be transferred; and

(iii) The name and signature of the authorized account representative of the transferor account and the date signed; and

(2) When the Administrator attempts to record the transfer, the transferor account includes each CSAPR NO_X Ozone Season Group 3 allowance identified by serial number in the transfer.

§ 97.1023 Recordation of CSAPR NO_X Ozone Season Group 3 allowance transfers.

(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a CSAPR NO_X Ozone Season Group 3 allowance transfer that is correctly submitted under § 97.1022, the Administrator will record a CSAPR NO_X Ozone Season Group 3 allowance transfer by moving each CSAPR NO_X Ozone Season Group 3 allowance from the transferor account to the transferee account as specified in the transfer.

(b) A CSAPR NO_X Ozone Season Group 3 allowance transfer to or from a compliance account that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CSAPR NO_X Ozone Season Group 3 allowances allocated or auctioned for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions from such compliance account under § 97.1024 for the control period immediately before such allowance transfer deadline.

(c) Where a CSAPR NO_X Ozone Season Group 3 allowance transfer is not correctly submitted under § 97.1022, the Administrator will not record such transfer.

(d) Within 5 business days of recordation of a CSAPR NO_X Ozone Season Group 3 allowance transfer under paragraphs (a) and (b) of the section, the Administrator will notify the authorized account representatives of both the transferor and transferee accounts.

(e) Within 10 business days of receipt of a CSAPR NO_X Ozone Season Group 3 allowance transfer that is not correctly submitted under § 97.1022, the Administrator will notify the authorized account representatives of both accounts subject to the transfer of:

(1) A decision not to record the transfer, and

(2) The reasons for such non-recordation.

§ 97.1024 Compliance with CSAPR NO_X Ozone Season Group 3 emissions limitation.

(a) *Availability for deduction for compliance.* CSAPR NO_X Ozone Season Group 3 allowances are available to be deducted for compliance with a source's CSAPR NO_X Ozone Season Group 3 emissions limitation for a control period in a given year only if the CSAPR NO_X Ozone Season Group 3 allowances:

(1) Were allocated or auctioned for such control period or a control period in a prior year; and

(2) Are held in the source's compliance account as of the allowance transfer deadline for such control period.

(b) *Deductions for compliance.* After the recordation, in accordance with § 97.1023, of CSAPR NO_X Ozone Season Group 3 allowance transfers submitted by the allowance transfer deadline for a control period in a given year, the Administrator will deduct from each source's compliance account CSAPR NO_X Ozone Season Group 3 allowances available under paragraph (a) of this section in order to determine whether the source meets the CSAPR NO_X Ozone Season Group 3 emissions limitation for such control period, as follows:

(1) Until the amount of CSAPR NO_X Ozone Season Group 3 allowances deducted equals the number of tons of total NO_X emissions from all CSAPR NO_X Ozone Season Group 3 units at the source for such control period; or

(2) If there are insufficient CSAPR NO_X Ozone Season Group 3 allowances to complete the deductions in paragraph (b)(1) of this section, until no more CSAPR NO_X Ozone Season Group 3 allowances available under paragraph (a) of this section remain in the compliance account.

(c) *Selection of CSAPR NO_X Ozone Season Group 3 allowances for deduction*—(1) *Identification by serial number.* The designated representative for a source may request that specific CSAPR NO_X Ozone Season Group 3 allowances, identified by serial number, in the source's compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the CSAPR NO_X Ozone Season Group 3 source and the appropriate serial numbers.

(2) *First-in, first-out.* The Administrator will deduct CSAPR NO_X Ozone Season Group 3 allowances under paragraph (b) or (d) of this section from the source's compliance account in accordance with a complete request under paragraph (c)(1) of this section or, in the absence of such request or in the case of identification of an insufficient amount of CSAPR NO_X Ozone Season Group 3 allowances in such request, on a first-in, first-out accounting basis in the following order:

(i) Any CSAPR NO_X Ozone Season Group 3 allowances that were recorded in the compliance account pursuant to § 97.1021 and not transferred out of the compliance account, in the order of recordation; and then

(ii) Any other CSAPR NO_X Ozone Season Group 3 allowances that were transferred to and recorded in the compliance account pursuant to this subpart or that were recorded in the compliance account pursuant to § 97.526(c) or 97.826(c), in the order of recordation.

(d) *Deductions for excess emissions.* After making the deductions for compliance under paragraph (b) of this section for a control period in a year in which the CSAPR NO_X Ozone Season Group 3 source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CSAPR NO_X Ozone Season Group 3 allowances, allocated or auctioned for a control period in a prior year or the control period in the year of the excess emissions or in the immediately following year, equal to two times the number of tons of the source's excess emissions.

(e) *Recordation of deductions.* The Administrator will record in the appropriate compliance account all deductions from such an account under paragraphs (b) and (d) of this section.

§ 97.1025 Compliance with CSAPR NO_X Ozone Season Group 3 assurance provisions.

(a) *Availability for deduction.* CSAPR NO_X Ozone Season Group 3 allowances are available to be deducted for compliance with the CSAPR NO_X Ozone Season Group 3 assurance provisions for a control period in a given year by the owners and operators of a group of one or more base CSAPR NO_X Ozone Season Group 3 sources and units in a State (and Indian country within the borders

of such State) only if the CSAPR NO_X Ozone Season Group 3 allowances:

(1) Were allocated or auctioned for a control period in a prior year or the control period in the given year or in the immediately following year; and

(2) Are held in the assurance account, established by the Administrator for such owners and operators of such group of base CSAPR NO_X Ozone Season Group 3 sources and units in such State (and Indian country within the borders of such State) under paragraph (b)(3) of this section, as of the deadline established in paragraph (b)(4) of this section.

(b) *Deductions for compliance.* The Administrator will deduct CSAPR NO_X Ozone Season Group 3 allowances available under paragraph (a) of this section for compliance with the CSAPR NO_X Ozone Season Group 3 assurance provisions for a State for a control period in a given year in accordance with the following procedures:

(1) By June 1, 2022 and June 1, 2023 and by August 1 of each year thereafter, the Administrator will:

(i) Calculate, for each State (and Indian country within the borders of such State), the total NO_X emissions from all base CSAPR NO_X Ozone Season Group 3 units at base CSAPR NO_X Ozone Season Group 3 sources in the State (and Indian country within the borders of such State) during the control period in the year before the year of this calculation deadline and the amount, if any, by which such total NO_X emissions exceed the State assurance level as described in § 97.1006(c)(2)(iii); and

(ii) If the calculations under paragraph (b)(1)(i) of this section indicate that the total NO_X emissions from all CSAPR NO_X Ozone Season Group 3 units at CSAPR NO_X Ozone Season Group 3 sources in any State (and Indian country within the borders of such State) during such control period exceed the State assurance level for such control period, promulgate a notice of data availability of the results of the calculations required in paragraph (b)(1)(i) of this section, including separate calculations of the NO_X emissions from each base CSAPR NO_X Ozone Season Group 3 source.

(2) For each notice of data availability required in paragraph (b)(1)(ii) of this section and for any State (and Indian country within the borders of such State) identified in such notice as having base CSAPR NO_X Ozone Season Group 3 units with total NO_X emissions exceeding the State assurance level for a control period in a given year, as described in § 97.1006(c)(2)(iii):

(i) For a control period before 2023 only, by July 1 immediately after the promulgation of such notice, the designated representative of each base CSAPR NO_X Ozone Season Group 3 source in each such State (and Indian country within the borders of such State) shall submit a statement, in a format prescribed by the Administrator, providing for each base CSAPR NO_X Ozone Season Group 3 unit (if any) at the source that operates during, but is not allocated an amount of CSAPR NO_X Ozone Season Group 3 allowances for, such control period, the unit's allowable NO_X emission rate for such control period and, if such rate is expressed in lb per mmBtu, the unit's heat rate.

(ii) The Administrator will calculate, for each such State (and Indian country within the borders of such State) and such control period and each common designated representative for such control period for a group of one or more base CSAPR NO_X Ozone Season Group 3 sources and units in the State (and Indian country within the borders of such State), the common designated representative's share of the total NO_X emissions from all base CSAPR NO_X Ozone Season Group 3 units at base CSAPR NO_X Ozone Season Group 3 sources in the State (and Indian country within the borders of such State), the common designated representative's assurance level, and the amount (if any) of CSAPR NO_X Ozone Season Group 3 allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in § 97.1006(c)(2)(i). For a control period before 2023, if the results of these calculations were not included in the notice of data availability required in paragraph (b)(1)(ii) of this section, the Administrator will promulgate a notice of data availability of the results of these calculations by August 1 immediately after the promulgation of such notice. For a control period in 2023 or thereafter, the Administrator will include the results of these calculations in the notice of data availability required in paragraph (b)(1)(ii) of this section.

(iii) The Administrator will provide an opportunity for submission of objections to the calculations referenced by the notice or notices of data availability required in paragraphs (b)(1)(ii) and (b)(2)(ii) of this section.

(A) Objections shall be submitted by the deadline specified in such notice or notices and shall be limited to addressing whether the calculations referenced in the notice or notices are in accordance with § 97.1006(c)(2)(iii), §§ 97.1006(b) and 97.1030 through 97.1035, the definitions of ''common designated representative'', ''common designated representative's assurance level'', and ''common designated representative's share'' in § 97.1002, and the calculation formula in § 97.1006(c)(2)(i).

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (b)(2)(iii)(A) of this section. By October 1 immediately after the promulgation of such notice or notices, the Administrator will promulgate a notice of data availability of the calculations incorporating any adjustments that the Administrator determines to be necessary and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(iii)(A) of this section.

(3) For any State (and Indian country within the borders of such State) referenced in each notice of data availability required in paragraph (b)(2)(iii)(B) of this section as having base CSAPR NO_X Ozone Season Group 3 units with total NO_X emissions exceeding the State assurance level for a control period in a given year, the Administrator will establish one assurance account for each set of owners and operators referenced, in the notice of data availability required under paragraph (b)(2)(iii)(B) of this section, as all of the owners and operators of a group of base CSAPR NO_X Ozone Season Group 3 sources and units in the State (and Indian country within the borders of such State) having a common designated representative for such control period and as being required to hold CSAPR NO_X Ozone Season Group 3 allowances.

(4)(i) As of midnight of November 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(iii)(B) of this section, the owners and operators described in paragraph (b)(3) of this section shall hold in the assurance account established for them and for the appropriate base CSAPR NO_X Ozone Season Group 3 sources, base CSAPR NO_X Ozone Season Group 3 units, and State (and Indian country within the borders of such State) under paragraph (b)(3) of this section a total amount of CSAPR NO_X Ozone Season Group 3 allowances, available for deduction under paragraph (a) of this section, equal to the amount such owners and operators are required to hold with regard to such sources, units and State (and Indian country within the borders of such State) as calculated by the Administrator and referenced in such notice.

(ii) Notwithstanding the allowance-holding deadline specified in paragraph

(b)(4)(i) of this section, if November 1 is not a business day, then such allowance-holding deadline shall be midnight of the first business day thereafter.

(5) After November 1 (or the date described in paragraph (b)(4)(ii) of this section) immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(iii)(B) of this section and after the recordation, in accordance with § 97.1023, of CSAPR NO_X Ozone Season Group 3 allowance transfers submitted by midnight of such date, the Administrator will determine whether the owners and operators described in paragraph (b)(3) of this section hold, in the assurance account for the appropriate base CSAPR NO_X Ozone Season Group 3 sources, base CSAPR NO_X Ozone Season Group 3 units, and State (and Indian country within the borders of such State) established under paragraph (b)(3) of this section, the amount of CSAPR NO_X Ozone Season Group 3 allowances available under paragraph (a) of this section that the owners and operators are required to hold with regard to such sources, units, and State (and Indian country within the borders of such State) as calculated by the Administrator and referenced in the notice required in paragraph (b)(2)(iii)(B) of this section.

(6) Notwithstanding any other provision of this subpart and any revision, made by or submitted to the Administrator after the promulgation of the notice of data availability required in paragraph (b)(2)(iii)(B) of this section for a control period in a given year, of any data used in making the calculations referenced in such notice, the amounts of CSAPR NO_X Ozone Season Group 3 allowances that the owners and operators are required to hold in accordance with § 97.1006(c)(2)(i) for such control period shall continue to be such amounts as calculated by the Administrator and referenced in such notice required in paragraph (b)(2)(iii)(B) of this section, except as follows:

(i) If any such data are revised by the Administrator as a result of a decision in or settlement of litigation concerning such data on appeal under part 78 of this chapter of such notice, or on appeal under section 307 of the Clean Air Act of a decision rendered under part 78 of this chapter on appeal of such notice, then the Administrator will use the data as so revised to recalculate the amounts of CSAPR NO_X Ozone Season Group 3 allowances that owners and operators are required to hold in accordance with the calculation formula in § 97.1006(c)(2)(i) for such control period with regard to the base CSAPR NO_X Ozone Season Group 3 sources, base CSAPR NO_X Ozone Season Group 3 units, and State (and Indian country within the borders of such State) involved, provided that such litigation under part 78 of this chapter, or the proceeding under part 78 of this chapter that resulted in the decision appealed in such litigation under section 307 of the Clean Air Act, was initiated no later than 30 days after promulgation of such notice required in paragraph (b)(2)(iii)(B) of this section.

(ii) For a control period before 2023 only, if any such data are revised by the owners and operators of a base CSAPR NO_X Ozone Season Group 3 source and base CSAPR NO_X Ozone Season Group 3 unit whose designated representative submitted such data under paragraph (b)(2)(i) of this section, as a result of a decision in or settlement of litigation concerning such submission, then the Administrator will use the data as so revised to recalculate the amounts of CSAPR NO_X Ozone Season Group 3 allowances that owners and operators are required to hold in accordance with the calculation formula in § 97.1006(c)(2)(i) for such control period with regard to the base CSAPR NO_X Ozone Season Group 3 sources, base CSAPR NO_X Ozone Season Group 3 units, and State (and Indian country within the borders of such State) involved, provided that such litigation was initiated no later than 30 days after promulgation of such notice required in paragraph (b)(2)(iii)(B) of this section.

(iii) If the revised data are used to recalculate, in accordance with paragraphs (b)(6)(i) and (ii) of this section, the amount of CSAPR NO_X Ozone Season Group 3 allowances that the owners and operators are required to hold for such control period with regard to the base CSAPR NO_X Ozone Season Group 3 sources, base CSAPR NO_X Ozone Season Group 3 units, and State (and Indian country within the borders of such State) involved—

(A) Where the amount of CSAPR NO_X Ozone Season Group 3 allowances that the owners and operators are required to hold increases as a result of the use of all such revised data, the Administrator will establish a new, reasonable deadline on which the owners and operators shall hold the additional amount of CSAPR NO_X Ozone Season Group 3 allowances in the assurance account established by the Administrator for the appropriate base CSAPR NO_X Ozone Season Group 3 sources, base CSAPR NO_X Ozone Season Group 3 units, and State (and Indian country within the borders of such State) under paragraph (b)(3) of this section. The owners' and operators' failure to hold such additional amount, as required, before the new deadline shall not be a violation of the Clean Air Act. The owners' and operators' failure to hold such additional amount, as required, as of the new deadline shall be a violation of the Clean Air Act. Each CSAPR NO_X Ozone Season Group 3 allowance that the owners and operators fail to hold as required as of the new deadline, and each day in such control period, shall be a separate violation of the Clean Air Act.

(B) For the owners and operators for which the amount of CSAPR NO_X Ozone Season Group 3 allowances required to be held decreases as a result of the use of all such revised data, the Administrator will record, in all accounts from which CSAPR NO_X Ozone Season Group 3 allowances were transferred by such owners and operators for such control period to the assurance account established by the Administrator for the appropriate base CSAPR NO_X Ozone Season Group 3 sources, base CSAPR NO_X Ozone Season Group 3 units, and State (and Indian country within the borders of such State) under paragraph (b)(3) of this section, a total amount of the CSAPR NO_X Ozone Season Group 3 allowances held in such assurance account equal to the amount of the decrease. If CSAPR NO_X Ozone Season Group 3 allowances were transferred to such assurance account from more than one account, the amount of CSAPR NO_X Ozone Season Group 3 allowances recorded in each such transferor account will be in proportion to the percentage of the total amount of CSAPR NO_X Ozone Season Group 3 allowances transferred to such assurance account for such control period from such transferor account.

(C) Each CSAPR NO_X Ozone Season Group 3 allowance held under paragraph (b)(6)(iii)(A) of this section as a result of recalculation of requirements under the CSAPR NO_X Ozone Season Group 3 assurance provisions for such control period must be a CSAPR NO_X Ozone Season Group 3 allowance allocated for a control period in a year before or the year immediately following, or in the same year as, the year of such control period.

§ 97.1026 Banking.

(a) A CSAPR NO_X Ozone Season Group 3 allowance may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.

(b) Any CSAPR NO_X Ozone Season Group 3 allowance that is held in a

compliance account or a general account will remain in such account unless and until the CSAPR NO_X Ozone Season Group 3 allowance is deducted or transferred under § 97.1011(c), § 97.1023, § 97.1024, § 97.1025, § 97.1027, or § 97.1028.

§ 97.1027 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any Allowance Management System account. Within 10 business days of making such correction, the Administrator will notify the authorized account representative for the account.

§ 97.1028 Administrator's action on submissions.

(a) The Administrator may review and conduct independent audits concerning any submission under the CSAPR NO_X Ozone Season Group 3 Trading Program and make appropriate adjustments of the information in the submission.

(b) The Administrator may deduct CSAPR NO_X Ozone Season Group 3 allowances from or transfer CSAPR NO_X Ozone Season Group 3 allowances to a compliance account or an assurance account, based on the information in a submission, as adjusted under paragraph (a) of this section, and record such deductions and transfers.

§ 97.1029 [Reserved]

§ 97.1030 General monitoring, recordkeeping, and reporting requirements.

The owners and operators, and to the extent applicable, the designated representative, of a CSAPR NO_X Ozone Season Group 3 unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and subpart H of part 75 of this chapter. For purposes of applying such requirements, the definitions in § 97.1002 and in § 72.2 of this chapter shall apply, the terms ''affected unit,'' ''designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') in part 75 of this chapter shall be deemed to refer to the terms ''CSAPR NO_X Ozone Season Group 3 unit,'' ''designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') respectively as defined in § 97.1002, and the term ''newly affected unit'' shall be deemed to mean ''newly affected CSAPR NO_X Ozone Season Group 3 unit''. The owner or operator of a unit that is not a CSAPR NO_X Ozone Season Group 3 unit but that is monitored under § 75.72(b)(2)(ii) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CSAPR NO_X Ozone Season Group 3 unit.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each CSAPR NO_X Ozone Season Group 3 unit shall:

(1) Install all monitoring systems required under this subpart for monitoring NO_X mass emissions and individual unit heat input (including all systems required to monitor NO_X emission rate, NO_X concentration, stack gas moisture content, stack gas flow rate, CO_2 or O_2 concentration, and fuel flow rate, as applicable, in accordance with §§ 75.71 and 75.72 of this chapter);

(2) Successfully complete all certification tests required under § 97.1031 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and

(3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.

(b) *Compliance deadlines.* Except as provided in paragraph (e) of this section, the owner or operator of a CSAPR NO_X Ozone Season Group 3 unit shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the latest of the following dates and shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the latest of the following dates:

(1) May 1, 2021;

(2) 180 calendar days after the date on which the unit commences commercial operation; or

(3) Where data for the unit are reported on a control period basis under § 97.1034(d)(1)(ii)(B), and where the compliance date under paragraph (b)(2) of this section is not in a month from May through September, May 1 immediately after the compliance date under paragraph (b)(2) of this section.

(4) The owner or operator of a CSAPR NO_X Ozone Season Group 3 unit for which construction of a new stack or flue or installation of add-on NO_X emission controls is completed after the applicable deadline under paragraph (b)(1), (2), or (3) of this section shall meet the requirements of § 75.4(e)(1) through (4) of this chapter, except that:

(i) Such requirements shall apply to the monitoring systems required under § 97.1030 through § 97.1035, rather than the monitoring systems required under part 75 of this chapter;

(ii) NO_X emission rate, NO_X concentration, stack gas moisture content, stack gas volumetric flow rate, and O_2 or CO_2 concentration data shall be determined and reported, rather than the data listed in § 75.4(e)(2) of this chapter; and

(iii) Any petition for another procedure under § 75.4(e)(2) of this chapter shall be submitted under § 97.1035, rather than § 75.66 of this chapter.

(c) *Reporting data.* The owner or operator of a CSAPR NO_X Ozone Season Group 3 unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for NO_X concentration, NO_X emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine NO_X mass emissions and heat input in accordance with § 75.31(b)(2) or (c)(3) of this chapter, section 2.4 of appendix D to part 75 of this chapter, or section 2.5 of appendix E to part 75 of this chapter, as applicable.

(d) *Prohibitions.* (1) No owner or operator of a CSAPR NO_X Ozone Season Group 3 unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 97.1035.

(2) No owner or operator of a CSAPR NO_X Ozone Season Group 3 unit shall operate the unit so as to discharge, or allow to be discharged, NO_X to the atmosphere without accounting for all such NO_X in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(3) No owner or operator of a CSAPR NO_X Ozone Season Group 3 unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_X mass discharged into the atmosphere or heat input, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(4) No owner or operator of a CSAPR NO_X Ozone Season Group 3 unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 97.1005 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the Administrator for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 97.1031(d)(3)(i).

(e) *Long-term cold storage.* The owner or operator of a CSAPR NO_X Ozone Season Group 3 unit is subject to the applicable provisions of § 75.4(d) of this chapter concerning units in long-term cold storage.

§ 97.1031 Initial monitoring system certification and recertification procedures.

(a) The owner or operator of a CSAPR NO_X Ozone Season Group 3 unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 97.1030(a)(1) if the following conditions are met:

(1) The monitoring system has been previously certified in accordance with part 75 of this chapter; and

(2) The applicable quality-assurance and quality-control requirements of § 75.21 of this chapter and appendices B, D, and E to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.

(b) The recertification provisions of this section shall apply to a monitoring system under § 97.1030(a)(1) that is exempt from initial certification requirements under paragraph (a) of this section.

(c) If the Administrator has previously approved a petition under § 75.17(a) or (b) of this chapter for apportioning the NO_X emission rate measured in a common stack or a petition under § 75.66 of this chapter for an alternative to a requirement in § 75.12 or § 75.17 of this chapter, the designated representative shall resubmit the petition to the Administrator under § 97.1035 to determine whether the approval applies under the CSAPR NO_X Ozone Season Group 3 Trading Program.

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CSAPR NO_X Ozone Season Group 3 unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (*i.e.,* a continuous emission monitoring system and an excepted monitoring system under appendices D and E to part 75 of this chapter) under § 97.1030(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each continuous monitoring system under § 97.1030(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 97.1030(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 97.1030(a)(1) that may significantly affect the ability of the system to accurately measure or record NO_X mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system, and any excepted NO_X monitoring system under appendix E to part 75 of this chapter, under § 97.1030(a)(1) are subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) *Approval process for initial certification and recertification.* For initial certification of a continuous monitoring system under § 97.1030(a)(1), paragraphs (d)(3)(i) through (v) of this section apply. For recertifications of such monitoring systems, paragraphs (d)(3)(i) through (iv) of this section and the procedures in § 75.20(b)(5) and (g)(7) of this chapter (in lieu of the procedures in paragraph (d)(3)(v) of this section) apply, provided that in applying paragraphs (d)(3)(i) through (iv) of this section, the words ''certification'' and ''initial certification'' are replaced by the word ''recertification'' and the word ''certified'' is replaced by the word ''recertified''.

(i) *Notification of certification.* The designated representative shall submit to the appropriate EPA Regional Office and the Administrator written notice of the dates of certification testing, in accordance with § 97.1033.

(ii) *Certification application.* The designated representative shall submit to the Administrator a certification application for each monitoring system. A complete certification application shall include the information specified in § 75.63 of this chapter.

(iii) *Provisional certification date.* The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the CSAPR NO_X Ozone Season Group 3 Trading Program for a period not to exceed 120 days after receipt by the Administrator of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Administrator does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the Administrator.

(iv) *Certification application approval process.* The Administrator will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the Administrator does not issue such a notice within such 120-day period, each monitoring system that

meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CSAPR NO_X Ozone Season Group 3 Trading Program.

(A) *Approval notice.* If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the Administrator will issue a written notice of approval of the certification application within 120 days of receipt.

(B) *Incomplete application notice.* If the certification application is not complete, then the Administrator will issue a written notice of incompleteness that sets a reasonable date by which the designated representative must submit the additional information required to complete the certification application. If the designated representative does not comply with the notice of incompleteness by the specified date, then the Administrator may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section.

(C) *Disapproval notice.* If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the Administrator will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Administrator and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter).

(D) *Audit decertification.* The Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 97.1032(b).

(v) *Procedures for loss of certification.* If the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

(A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under § 75.20(a)(4)(iii), § 75.20(g)(7), or § 75.21(e) of this chapter and continuing until the applicable date and hour specified under § 75.20(a)(5)(i) or (g)(7) of this chapter:

(*1*) For a disapproved NO_X emission rate (*i.e.,* NO_X-diluent) system, the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter.

(*2*) For a disapproved NO_X pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of NO_X and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

(*3*) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO_2 concentration or the minimum potential O_2 concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.

(*4*) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.

(*5*) For a disapproved excepted NO_X monitoring system under appendix E to part 75 of this chapter, the fuel-specific maximum potential NO_X emission rate, as defined in § 72.2 of this chapter.

(B) The designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(3)(i) and (ii) of this section.

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(e) The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under § 75.19 of this chapter shall meet the applicable certification and recertification requirements in §§ 75.19(a)(2) and 75.20(h) of this chapter. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in § 75.20(g) of this chapter.

(f) The designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator under subpart E of part 75 of this chapter shall comply with the applicable notification and application procedures of § 75.20(f) of this chapter.

§ 97.1032 Monitoring system out-of-control periods.

(a) *General provisions.* Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable missing data procedures in subpart D or subpart H of, or appendix D or appendix E to, part 75 of this chapter.

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 97.1031 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the Administrator or any State or permitting authority. By issuing the notice of disapproval, the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 97.1031 for each disapproved monitoring system.

§ 97.1033 Notifications concerning monitoring.

The designated representative of a CSAPR NO_X Ozone Season Group 3 unit shall submit written notice to the Administrator in accordance with § 75.61 of this chapter.

§ 97.1034 Recordkeeping and reporting.

(a) *General provisions.* The designated representative shall comply with all recordkeeping and reporting requirements in paragraphs (b) through (e) of this section, the applicable recordkeeping and reporting

requirements under § 75.73 of this chapter, and the requirements of § 97.1014(a).

(b) *Monitoring plans.* The owner or operator of a CSAPR NO_X Ozone Season Group 3 unit shall comply with the requirements of § 75.73(c) and (e) of this chapter.

(c) *Certification applications.* The designated representative shall submit an application to the Administrator within 45 days after completing all initial certification or recertification tests required under § 97.1031, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports.* The designated representative shall submit quarterly reports, as follows:

(1)(i) If a CSAPR NO_X Ozone Season Group 3 unit is subject to the Acid Rain Program or the CSAPR NO_X Annual Trading Program or if the owner or operator of such unit chooses to report on an annual basis under this subpart, then the designated representative shall meet the requirements of subpart H of part 75 of this chapter (concerning monitoring of NO_X mass emissions) for such unit for the entire year and report the NO_X mass emissions data and heat input data for such unit for the entire year.

(ii) If a CSAPR NO_X Ozone Season Group 3 unit is not subject to the Acid Rain Program or the CSAPR NO_X Annual Trading Program, then the designated representative shall either:

(A) Meet the requirements of subpart H of part 75 of this chapter for such unit for the entire year and report the NO_X mass emissions data and heat input data for such unit for the entire year in accordance with paragraph (d)(1)(i) of this section; or

(B) Meet the requirements of subpart H of part 75 of this chapter (including the requirements in § 75.74(c) of this chapter) for such unit for the control period and report the NO_X mass emissions data and heat input data (including the data described in § 75.74(c)(6) of this chapter) for such unit only for the control period of each year.

(2) The designated representative shall report the NO_X mass emissions data and heat input data for a CSAPR NO_X Ozone Season Group 3 unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter indicated under paragraph (d)(1) of this section beginning by the latest of:

(i) The calendar quarter covering May 1, 2021, through June 30, 2021;

(ii) The calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 97.1030(b); or

(iii) For a unit that reports on a control period basis under paragraph (d)(1)(ii)(B) of this section, if the calendar quarter under paragraph (d)(2)(ii) of this section does not include a month from May through September, the calendar quarter covering May 1 through June 30 immediately after the calendar quarter under paragraph (d)(2)(ii) of this section.

(3) The designated representative shall submit each quarterly report to the Administrator within 30 days after the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.73(f) of this chapter.

(4) For CSAPR NO_X Ozone Season Group 3 units that are also subject to the Acid Rain Program, CSAPR NO_X Annual Trading Program, CSAPR SO_2 Group 1 Trading Program, or CSAPR SO_2 Group 2 Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of part 75 of this chapter as applicable, in addition to the NO_X mass emission data, heat input data, and other information required by this subpart.

(5) The Administrator may review and conduct independent audits of any quarterly report in order to determine whether the quarterly report meets the requirements of this subpart and part 75 of this chapter, including the requirement to use substitute data.

(i) The Administrator will notify the designated representative of any determination that the quarterly report fails to meet any such requirements and specify in such notification any corrections that the Administrator believes are necessary to make through resubmission of the quarterly report and a reasonable time period within which the designated representative must respond. Upon request by the designated representative, the Administrator may specify reasonable extensions of such time period. Within the time period (including any such extensions) specified by the Administrator, the designated representative shall resubmit the quarterly report with the corrections specified by the Administrator, except to the extent the designated representative provides information demonstrating that a specified correction is not necessary because the quarterly report already meets the requirements of this subpart and part 75 of this chapter that are relevant to the specified correction.

(ii) Any resubmission of a quarterly report shall meet the requirements applicable to the submission of a quarterly report under this subpart and part 75 of this chapter, except for the deadline set forth in paragraph (d)(3) of this section.

(e) *Compliance certification.* The designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(1) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications;

(2) For a unit with add-on NO_X emission controls and for all hours where NO_X data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate NO_X emissions; and

(3) For a unit that is reporting on a control period basis under paragraph (d)(1)(ii)(B) of this section, the NO_X emission rate and NO_X concentration values substituted for missing data under subpart D of part 75 of this chapter are calculated using only values from a control period and do not systematically underestimate NO_X emissions.

§ 97.1035 Petitions for alternatives to monitoring, recordkeeping, or reporting requirements.

(a) The designated representative of a CSAPR NO_X Ozone Season Group 3 unit may submit a petition under § 75.66 of this chapter to the Administrator, requesting approval to apply an alternative to any requirement of §§ 97.1030 through 97.1034.

(b) A petition submitted under paragraph (a) of this section shall include sufficient information for the evaluation of the petition, including, at a minimum, the following information:

(1) Identification of each unit and source covered by the petition;

(2) A detailed explanation of why the proposed alternative is being suggested in lieu of the requirement;

(3) A description and diagram of any equipment and procedures used in the proposed alternative;

(4) A demonstration that the proposed alternative is consistent with the purposes of the requirement for which the alternative is proposed and with the purposes of this subpart and part 75 of this chapter and that any adverse effect of approving the alternative will be *de minimis;* and

(5) Any other relevant information that the Administrator may require.

(c) Use of an alternative to any requirement referenced in paragraph (a) of this section is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator and that such use is in accordance with such approval.

[FR Doc. 2020–23237 Filed 10–29–20; 8:45 am]

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FEDERAL REGISTER

Vol. 85 Friday,
No. 211 October 30, 2020

Part III

The President

Presidential Determination No. 2021–01 of October 14, 2020—Presidential Determination and Certification With Respect to the Child Soldiers Prevention Act of 2008

Federal Register
Vol. 85, No. 211
Friday, October 30, 2020

Presidential Documents

Title 3—

The President

Presidential Determination No. 2021–01 of October 14, 2020

Presidential Determination and Certification With Respect to the Child Soldiers Prevention Act of 2008

Memorandum for the Secretary of State

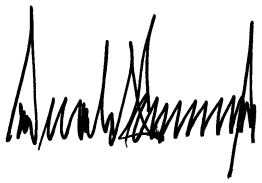
Pursuant to section 404 of the Child Soldiers Prevention Act of 2008 (22 U.S.C. 2370c–1) (CSPA), I hereby:

Determine that it is in the national interest of the United States to waive the application of the prohibition under section 404(a) of the CSPA with respect to Afghanistan, Cameroon, Iraq, Libya, and Nigeria; to waive the application of the prohibition in section 404(a) of the CSPA with respect to the Democratic Republic of the Congo to allow for the provision of International Military Education and Training (IMET) and Peacekeeping Operations (PKO) assistance, to the extent that the CSPA would restrict such assistance or support; to waive the application of the prohibition in section 404(a) of the CSPA with respect to Somalia to allow for the provision of IMET and PKO assistance and support provided pursuant to 10 U.S.C. 333, to the extent that the CSPA would restrict such assistance or support; to waive the application of the prohibition in section 404(a) of the CSPA with respect to South Sudan to allow for the provision of PKO assistance, to the extent that the CSPA would restrict such assistance; and, to waive the application of the prohibition in section 404(a) of the CSPA with respect to Yemen to allow for the provision of PKO and IMET assistance and support provided pursuant to 10 U.S.C. 333, to the extent that the CSPA would restrict such assistance or support; and

Certify that the governments of the above countries are taking effective and continuing steps to address the problems of child soldiers.

Accordingly, I hereby waive such applications of section 404(a) of the CSPA.

You are authorized and directed to submit this determination to the Congress, along with the Memorandum of Justification, and to publish the determination in the *Federal Register.*



THE WHITE HOUSE,
Washington, October 14, 2020

[FR Doc. 2020–24292
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