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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0022; Project Identifier MCAI–2022–00564–E; Amendment 39–22400; AD 2023–06–14]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada Corporation Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Pratt & Whitney Canada Corporation (P&WC) PW308A and PW308C model turbofan engines. This AD is prompted by a manufacturer's design review, which identified that the combustion chamber outer case (CCOC) to rear compressor case (RCC) flange bolt low cycle fatigue life was inadequate and that those flange bolts may develop cracks resulting in flange bolt fracture. This AD requires replacing all CCOC flange bolts and modifying the CCOC and inner bypass ducts. This AD also prohibits installation of certain flange bolts on any affected engine, as specified in a Transport Canada AD, which is proposed for incorporation by reference (IBR). The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 30, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 30, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0022; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; phone: (888) 663–3639; email: *TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca.* You may find this material on the Transport Canada website at *tc.canada.ca/en/aviation.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–0022.

FOR FURTHER INFORMATION CONTACT: Barbara Caufield, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7146; email: *barbara.caufield@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to P&WC PW308A model turbofan engines with build specification (BS) BS935 and BS1249, serial numbers PCE–CE0180 and prior, and PW308C model turbofan engines with BS1047 and BS1238, serial numbers PCE–CF0967 and prior. The NPRM published in the **Federal Register** on January 24, 2023 (88 FR 4111). The NPRM was prompted by Transport Canada AD CF–2022–22, dated April 25, 2022 (Transport Canada AD CF–2022–22), issued by Transport Canada, which is the aviation authority for Canada (referred to after this as the MCAI). The MCAI states that during a design review, the manufacturer identified that the existing low cycle fatigue life of the flange bolts that secure the CCOC and the RCC is inadequate. As of May 6, 2022 (the effective date of Transport Canada AD CF–2022–22), there have been no reports of cracked flange bolts, however the MCAI states there is potential that cracks could develop on the flange bolt, which could lead to fracture of the bolt. The MCAI also states that to address the potential cracking issue, P&WC introduced redesigned flange bolts made of an improved fatigue resistant material. P&WC also introduced revised procedures to modify the CCOC and the inner bypass duct flange with chamfers to reverse the installation direction of the flange bolts. The MCAI specifies installation of the redesigned bolt configuration, modifications to the CCOC and inner bypass duct, and specifies an installation prohibition for flange bolts with part numbers MS9698–08 or MS9698–09 on the affected engines.

In the NPRM, the FAA proposed to require replacing all CCOC flange bolts and modifying the CCOC and inner bypass ducts. The NPRM also proposed to prohibit installation of flange bolts with part numbers MS9698–08 and MS9698–09 on any affected engine, as specified in Transport Canada AD CF–2022–22. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0022.

Discussion of Final Airworthiness Directive

Comments

The FAA received one anonymous comment that supported the NPRM without change.

Conclusion

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial

changes, this AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Transport Canada AD CF–2022–22, which specifies instructions for replacing certain CCOC flange bolts and modifying the CCOC and inner bypass ducts. Transport Canada AD CF–2022–22 also specifies an installation prohibition for flange bolts with part numbers MS9698–08 and MS9698–09 on the affected engines.

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

Costs of Compliance

The FAA estimates that this AD affects 668 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Remove and replace all CCOC flange bolts	1.5 work-hours × $85 per hour = $128	$7,742	$7,870	$5,257,160
Modify the CCOC and inner bypass ducts	1.5 work-hours × $85 per hour = $128	0	128	85,504

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2023–06–14 Pratt & Whitney Canada Corporation: Amendment 39–22400; Docket No. FAA–2023–0022; Project Identifier MCAI–2022–00564–E.

(a) Effective Date

This airworthiness directive (AD) is effective May 30, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to:

(1) Pratt & Whitney Canada Corporation (P&WC) PW308A model turbofan engines with build specification (BS) BS935 and BS1249, serial numbers PCE–CE0180 and prior; and

(2) P&WC PW308C model turbofan engines with BS1047 and BS1238, serial numbers PCE–CF0967 and prior.

(d) Subject

Joint Aircraft Service Component (JASC) Code 7240, Turbine Engine Combustion Section.

(e) Unsafe Condition

This AD was prompted by a manufacturer's design review which identified that the combustion chamber outer case to rear compressor case flange bolts low cycle fatigue life was inadequate, and that those flange bolts may develop cracks resulting in flange bolt fracture. The FAA is issuing this AD to prevent cracking and fracture of the flange bolts. The unsafe condition, if not addressed, may result in flange bolt fracture, flange separation or case rupture, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraphs (h) and (i) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, Transport Canada AD CF–2022–22.

(h) Exceptions to Transport Canada AD CF–2022–22

Where Transport Canada AD CF–2022–22 requires compliance from its effective date, this AD requires using the effective date of this AD.

(i) No Reporting Requirement

Although the service information referenced in Transport Canada AD CF–2022–22 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Additional Information

For more information about this AD, contact Barbara Caufield, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7146; email: *barbara.caufield@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) Transport Canada AD CF–2022–22, dated April 22, 2022.

(ii) [Reserved]

(3) For Transport Canada AD CF–2022–22, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; phone: (888) 663–3639; email: *TC.AirworthinessDirectives-Consignesde navigabilite.TC@tc.gc.ca.* You may find this material on the Transport Canada website at *tc.canada.ca/en/aviation.*

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

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

Issued on March 24, 2023.

Christina Underwood,

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

[FR Doc. 2023–08624 Filed 4–24–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0665; Project Identifier MCAI–2022–00625–R; Amendment 39–22405; AD 2023–07–03]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Leonardo S.p.a. Model AB412 and AB412 EP helicopters. This AD was prompted by a report of a fatigue crack in a left-hand (LH) fin spar cap. This AD requires cleaning and repetitively inspecting certain part-numbered LH fin spar caps, and repetitively inspecting the exterior of the fin skin and, depending on the results, accomplishing corrective action. This AD also prohibits certain corrective actions as a terminating action for the repetitive inspections unless the corrective actions have been approved as a terminating action, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 10, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 10, 2023.

The FAA must receive comments on this AD by June 9, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0665; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the EASA AD, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material that is incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* internet: *easa.europa.eu.* You may find this IBR material on the EASA website at *ad.easa.europa.eu.*
- You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–0665.

Other Related Service Information: For Leonardo Helicopters service information identified in this final rule, contact Leonardo S.p.A. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G. Agusta 520, 21017 C. Costa di Samarate (Va) Italy; telephone (+39) 0331–225074; fax (+39) 0331–229046; or at *customerportal.leonardocompany.com/en-US/.* This service information is also available at the FAA contact information under *Material Incorporated by Reference* above.

FOR FURTHER INFORMATION CONTACT: Gregory Koenig, Aerospace Engineer, Airframe & Administrative Services Section, Chicago ACO Branch, Compliance & Airworthiness Division, FAA, 2300 E Devon Ave., Des Plaines, IL 60018; telephone (847) 294–7127; email *Gregory.L.Koenig@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–0665; Project Identifier MCAI–2022–00625–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

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 AD 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 AD, it is important that you clearly designate

the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Gregory Koenig, Aerospace Engineer, Airframe & Administrative Services Section, Chicago ACO Branch, Compliance & Airworthiness Division, FAA, 2300 E Devon Ave., Des Plaines, IL 60018; telephone (847) 294–7127; email *Gregory.L.Koenig@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0084, dated May 11, 2022 (EASA AD 2022–0084), to correct an unsafe condition for Leonardo S.p.A. Model AB212, AB412, and AB412EP helicopters, all serial numbers.

This AD was prompted by a report of a fatigue crack in a LH fin spar cap. The FAA is issuing this AD to detect a crack, a loose or missing rivet, damage, or distortion. The unsafe condition, if not addressed, could result in stress concentrations at the edge of the rivet hole, possibly resulting in reduced structural integrity of the fin spar and subsequent loss of control of the helicopter. See EASA AD 2022–0084 for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0084 requires cleaning and repetitively inspecting certain part-numbered LH fin spar caps for a crack, loose rivet, and other damage, and repetitively inspecting the exterior of the fin skin in the area in contact with the fin spar cap for a crack, loose rivet, and distortion. If any discrepancy is detected, EASA AD 2022–0084 also requires contacting Leonardo S.p.A. for approved repair instructions and accomplishing the repair. Additionally, EASA AD 2022–0084 prohibits certain corrective actions as terminating action for the repetitive inspections, unless stated otherwise in the repair instructions.

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

Other Related Service Information

The FAA also reviewed Leonardo Helicopters Service Bulletin No. 412–168, dated May 19, 2021, which specifies procedures to clean certain parts, and using a 10x magnifying glass and a bright light, inspect both flanges of the LH fin spar cap part number 212–030–447–117 for cracks, loose rivets, and other damage. This service information also specifies procedures to inspect the exterior of the fin skin in the area in contact with the fin spar cap for cracks, loose rivets, and distortion, and if any cracks or damage are found, to contact Leonardo Helicopters and send a compliance form to *absereng.aw@leonardocompany.com.*

FAA's Determination

These products have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA of the unsafe condition described in its AD. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of these same type designs.

AD Requirements

This AD requires accomplishing the actions specified in EASA AD 2022–0084, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD and except as discussed under ''Differences Between this AD and the EASA AD.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2022–0084 will be incorporated by reference in this FAA final rule. This AD would, therefore, require compliance with EASA AD 2022–0084 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0084 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0084. Service information referenced in EASA AD 2022–0084 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–0665.

Differences Between This AD and the EASA AD

EASA AD 2022–0084 applies to Model AB212 helicopters, whereas this AD does not because that model is not FAA type-certificated. If there is any discrepancy as defined in the service bulletin, EASA AD 2022–0084 requires contacting Leonardo S.p.A. for approved repair instructions and accomplishing the repair, whereas this AD requires accomplishing the corrective actions in accordance with a method approved by the FAA, EASA, or Leonardo S.p.a. Helicopters' Design Organization Approval instead.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

There are currently no domestic operators of these products. Accordingly, notice and opportunity for prior public comment are unnecessary, pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the foregoing reasons, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without prior notice and comment, RFA analysis is not required.

Costs of Compliance

There are no costs of compliance with this AD because there are no helicopters

with these type certificates on the U.S. Registry.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2023–07–03 Leonardo S.p.a.: Amendment 39–22405; Docket No. FAA–2023–0665; Project Identifier MCAI–2022–00625–R.

(a) Effective Date

This airworthiness directive (AD) is effective May 10, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Leonardo S.p.a. Model AB412 and AB412 EP helicopters, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code: 5302, Rotorcraft Tail Boom.

(e) Unsafe Condition

This AD was prompted by a report of a fatigue crack in a left-hand (LH) fin spar cap. The FAA is issuing this AD to detect a crack, a loose or missing rivet, damage, or distortion. The unsafe condition, if not addressed, could result in stress concentrations at the edge of the rivet hole, possibly resulting in reduced structural integrity of the fin spar and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency AD 2022–0084, dated May 11, 2022 (EASA AD 2022–0084).

(h) Exceptions to EASA AD 2022–0084

(1) Where EASA AD 2022–0084 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2022–0084 refers to flight hours, this AD requires using hours time-in-service.

(3) Where the service information referenced in paragraph (1) of EASA AD 2022–0084 specifies to ''inspect both flanges of the left hand fin spar cap between F.S. 50 and F.S. 71 using 10x magnifying glass and a bright light for cracks, loose rivets, and other damage;'' for this AD, replace that text with, ''inspect both flanges of the left hand fin spar cap between F.S. 50 and F.S. 71 using a 10X or higher power magnifying glass and a flashlight for a crack, a loose or missing rivet, and other damage, which may be indicated by fretting around the rivet.''

(4) Instead of complying with paragraph (2) of EASA AD 2022–0084, comply with the following; ''During any inspection as required by paragraph (1) of EASA AD 2022–0084, for this AD, if there is a crack, a loose or missing rivet, other damage, or distortion, before further flight, accomplish the corrective action in accordance with a method approved by the Manager, General Aviation & Rotorcraft Section, International Validation Branch, FAA; or EASA; or Leonardo S.p.a. Helicopters' Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.''

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0084.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0084 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

For more information about this AD, contact Gregory Koenig, Aerospace Engineer, Airframe & Administrative Services Section, Chicago ACO Branch, Compliance & Airworthiness Division, FAA, 2300 E Devon Ave., Des Plaines, IL 60018; telephone (847) 294–7127; email *Gregory.L.Koenig@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0084, dated May 11, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0084, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* internet: *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on April 3, 2023.

Christina Underwood,

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

[FR Doc. 2023–08629 Filed 4–24–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31481; Amdt. No. 4055]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPS) and associated Takeoff Minimums and Obstacle Departure procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 25, 2023. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 25, 2023.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30. 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., STB Annex, Bldg. 26, Room 217, Oklahoma City, OK 73099. Telephone (405) 954–1139.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, 8260–15B, when required by an entry on 8260–15A, and 8260–15C.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the typed of SIAPS, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPs as identified in the amendatory language for Part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flights safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

Lists of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on March 31, 2023.

Thomas J. Nichols,

Manager, Aviation Safety, Flight Standards Service, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 14 CFR part 97 is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 18 May 2023

Topeka, KS, KFOE, ILS OR LOC RWY 31, Amdt 10B
Manistee, MI, KMBL, Takeoff Minimums and Obstacle DP, Amdt 8
Albemarle, NC, KVUJ, Takeoff Minimums and Obstacle DP, Amdt 1A

Effective 15 June 2023

Juneau, AK, PAJN, LDA X RWY 8, Amdt 12E
Juneau, AK, PAJN, RNAV (GPS) V RWY 8, Amdt 2C
Clayton, AL, 11A, RNAV (GPS) RWY 10, Orig–E
Clayton, AL, 11A, RNAV (GPS) RWY 28, Amdt 1D
Clayton, AL, 11A, Takeoff Minimums and Obstacle DP, Amdt 3
Phoenix, AZ, KPHX, RNAV (RNP) Z RWY 7L, Orig–D, CANCELED
Phoenix, AZ, KPHX, RNAV (RNP) Z RWY 7R, Orig–D, CANCELED
Phoenix, AZ, KPHX, RNAV (RNP) Z RWY 8, Orig–C, CANCELED
Phoenix, AZ, KPHX, RNAV (RNP) Z RWY 25L, Orig–C, CANCELED
Phoenix, AZ, KPHX, RNAV (RNP) Z RWY 25R, Orig–C, CANCELED
Phoenix, AZ, KPHX, RNAV (RNP) Z RWY 26, Orig–C, CANCELED
Sedona, AZ, KSEZ, BYTER ONE, Graphic DP
Sedona, AZ, KSEZ, OATES ONE, Graphic DP, CANCELED
Sedona, AZ, KSEZ, RNAV (GPS) RWY 3, Amdt 1
Sedona, AZ, KSEZ, Takeoff Minimums and Obstacle DP, Amdt 2
Sacramento, CA, KMHR, ILS Y OR LOC Y RWY 22L, Orig
Sacramento, CA, KMHR, ILS Z OR LOC Z RWY 22L, ILS Z RWY 22L (SA CAT I), ILS Z RWY 22L (SA CAT II), Amdt 8
Santa Monica, CA, KSMO, Takeoff Minimums and Obstacle DP, Amdt 7A
Santa Monica, CA, KSMO, TOPANGA THREE, Graphic DP
Palatka, FL, 28J, Takeoff Minimums and Obstacle DP, Amdt 1
Brunswick, GA, KBQK, ILS OR LOC RWY 7, Amdt 10C
Keokuk, IA, KEOK, RNAV (GPS) RWY 8, Orig–D
Keokuk, IA, KEOK, RNAV (GPS) RWY 32, Orig–D
Macomb, IL, KMQB, RNAV (GPS) RWY 9, Amdt 1E
Mount Sterling, IL, I63, VOR/DME–A, Amdt 1A, CANCELED
Pittsfield, IL, KPPQ, VOR RWY 13, Amdt 4B, CANCELED
Quincy, IL, KUIN, ILS OR LOC RWY 4, Amdt 18
Quincy, IL, KUIN, LOC BC RWY 22, Amdt 7
Quincy, IL, KUIN, NDB RWY 4, Amdt 18
Quincy, IL, KUIN, RNAV (GPS) RWY 18, Orig–A, CANCELED
Quincy, IL, KUIN, RNAV (GPS) RWY 22, Amdt 1
Quincy, IL, KUIN, RNAV (GPS) RWY 36, Orig–A, CANCELED
Williamsburg, KY, KBYL, VOR RWY 20, Orig–F, CANCELED
Elkton, MD, 58M, VOR/DME–A, Orig, CANCELED
Princeton, ME, KPNN, RNAV (GPS) RWY 33, Orig
Rangeley, ME, 8B0, RNAV (GPS) RWY 32, Orig–A
Sault STE Marie, MI, KCIU, ILS OR LOC RWY 16, Amdt 8G
Hannibal, MO, KHAE, VOR/DME–A, Amdt 4A, CANCELED
Monroe City, MO, K52, RNAV (GPS) RWY 9, Orig–C
Monroe City, MO, K52, RNAV (GPS) RWY 27, Orig–C
Monroe City, MO, K52, VOR–A, Amdt 2A, CANCELED
Monticello, MO, 6M6, VOR/DME–A, Amdt 1, CANCELED
Charlotte, NC, KCLT, ILS OR LOC RWY 5, Amdt 38B, CANCELED
Charlotte, NC, KCLT, ILS OR LOC RWY 23, Amdt 3E, CANCELED
Charlotte, NC, KCLT, RNAV (GPS) Y RWY 5, Amdt 3C, CANCELED
Charlotte, NC, KCLT, RNAV (GPS) Y RWY 23, Amdt 1B, CANCELED
Charlotte, NC, KCLT, RNAV (RNP) Z RWY 5, Orig–B, CANCELED
Charlotte, NC, KCLT, RNAV (RNP) Z RWY 23, Orig–A, CANCELED
Devils Lake, ND, KDVL, VOR RWY 3, Orig–C, CANCELED
Devils Lake, ND, KDVL, VOR RWY 13, Amdt 1B, CANCELED
Devils Lake, ND, KDVL, VOR RWY 31, Amdt 1B, CANCELED
Central City, NE, 07K, RNAV (GPS) RWY 16, Orig–B
Farmington, NM, KFMN, VOR RWY 25, Orig
Dansville, NY, KDSV, Takeoff Minimums and Obstacle DP, Amdt 3
Astoria, OR, KAST, VOR RWY 8, Amdt 12C
Madras, OR, S33, RNAV (GPS) RWY 34, Amdt 1
Charleston, SC, KCHS, VOR OR TACAN RWY 15, Amdt 14B
Orangeburg, SC, KOGB, RNAV (GPS) RWY 5, Amdt 2
Orangeburg, SC, KOGB, RNAV (GPS) RWY 23, Amdt 2
Orangeburg, SC, KOGB, RNAV (GPS) RWY 35, Amdt 2
Summerville, SC, KDYB, NDB RWY 6, Amdt 1C
Belle Fourche, SD, KEFC, Takeoff Minimums and Obstacle DP, Amdt 3
Athens, TN, KMMI, RNAV (GPS) RWY 2, Orig–E
Athens, TN, KMMI, RNAV (GPS) RWY 20, Amdt 1E
Crossville, TN, KCSV, RNAV (GPS) RWY 26, Orig–C
Jasper, TN, KAPT, RNAV (GPS) RWY 4, Orig–C
Carthage, TX, 4F2, NDB RWY 35, Amdt 2B, CANCELED
College Station, TX, KCLL, VOR OR TACAN RWY 11, Amdt 19F
Van Horn, TX, KVHN, JURDU ONE, Graphic DP, CANCELED
Van Horn, TX, KVHN, Takeoff Minimums and Obstacle DP, Amdt 2
Charlottesville, VA, KCHO, RNAV (GPS) Y RWY 21, Amdt 3
Newport, VT, KEFK, RNAV (GPS) RWY 36, Amdt 2
Newport, VT, KEFK, Takeoff Minimums and Obstacle DP, Amdt 4
Deer Park, WA, KDEW, Takeoff Minimums and Obstacle DP, Amdt 1A
Seattle, WA, KBFI, RNAV (GPS) Y RWY 14R, Amdt 1A, CANCELED
Seattle, WA, KBFI, RNAV (RNP) Z RWY 14R, Amdt 1A, CANCELED
Spokane, WA, KSFF, ILS OR LOC RWY 22R, Amdt 1E
Spokane, WA, KSFF, MANITO ONE, Graphic DP
Spokane, WA, KSFF, Takeoff Minimums and Obstacle DP, Amdt 7
Spokane, WA, KSFF, VOR RWY 4L, Amdt 6B
Charleston, WV, KCRW, RNAV (RNP) Z RWY 5, Amdt 2A

Huntington, WV, KHTS, ILS OR LOC RWY 30, Amdt 10
Huntington, WV, KHTS, RNAV (GPS) RWY 30, Amdt 3
Petersburg, WV, W99, RNAV (GPS)–C, Orig–A
Petersburg, WV, W99, RNAV (GPS) Y RWY 31, Orig–C
Petersburg, WV, W99, RNAV (GPS) Z RWY 31, Orig–C
Petersburg, WV, W99, VOR/DME–A, Amdt 2D
Big Piney, WY, KBPI, RNAV (GPS) RWY 31, Amdt 1
Big Piney, WY, KBPI, Takeoff Minimums and Obstacle DP, Amdt 1
Big Piney, WY, KBPI, VOR RWY 31, Amdt 4
Pinedale, WY, KPNA, NDB–A, Orig–B, CANCELED
Pinedale, WY, KPNA, Takeoff Minimums and Obstacle DP, Amdt 3

[FR Doc. 2023–08688 Filed 4–24–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31482; Amdt. No. 4056]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 25, 2023. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 25, 2023.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, email *fr.inspection@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., STB Annex, Bldg. 26, Room 217, Oklahoma City, OK 73099. Telephone: (405) 954–1139.

SUPPLEMENTARY INFORMATION:

This rule amends 14 CFR part 97 by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for Part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a

''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on March 31, 2023.

Thomas J. Nichols,

Manager, Aviation Safety, Flight Standards Service, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 14 CFR part 97 is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
18–May–23	MO	Columbia	Columbia Rgnl	3/4628	3/15/23	ILS OR LOC RWY 2, Amdt 18.
18–May–23	ND	Lisbon	Lisbon Muni	3/7354	3/14/23	RNAV (GPS) RWY 14, Orig.
18–May–23	ND	Lisbon	Lisbon Muni	3/7356	3/14/23	RNAV (GPS) RWY 32, Orig.
18–May–23	NE	Broken Bow	Broken Bow Muni/Keith Glaze Fld.	3/7358	3/14/23	VOR RWY 14, Amdt 4D.

[FR Doc. 2023–08691 Filed 4–24–23; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Parts 1264 and 1271

RIN 2700–AE67

[NASA Document Number: NASA–23–015]

Implementation of the Federal Civil Penalties Inflation Adjustment Act and Adjustment of Amounts for 2023

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: The National Aeronautics and Space Administration (NASA) has adopted a final rule making inflation adjustments to civil monetary penalties within its jurisdiction. This final rule represents the annual 2023 inflation adjustments of monetary penalties. These adjustments are required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: This final rule is effective April 25, 2023.

FOR FURTHER INFORMATION CONTACT: Bryan R. Diederich, Office of the General Counsel, NASA Headquarters, (202) 358–0216.

SUPPLEMENTARY INFORMATION:

I. Background

The Inflation Adjustment Act, as amended by the 2015 Act, required Federal agencies to adjust the civil penalty amounts within their jurisdiction for inflation by July 1, 2016. Subsequent to the 2016 adjustment, Federal agencies were required to make an annual inflation adjustment by January 15 every year thereafter.[1] Under the amended Act, any increase in a civil penalty made under the Act will apply to penalties assessed after the increase takes effect, including penalties whose associated violation predated the increase.[2] The inflation adjustments mandated by the Act serve to maintain the deterrent effect of civil penalties and to promote compliance with the law.

Pursuant to the Act, adjustments to the civil penalties are required to be made by January 15 of each year. The annual adjustments are based on the percent change between the United States Department of Labor's Consumer Price Index for All Urban Consumers (CPI–U) for the month of October preceding the date of the adjustment and the CPI–U for October of the prior year (28 U.S.C. 2461 note, section (5)(b)(1)). Based on that formula, the cost-of-living adjustment multiplier for the 2023 adjustment is 1.07745. Pursuant to the 2015 Act, adjustments are rounded to the nearest dollar.

II. The Final Rule

This final rule makes the required adjustments to civil penalties for 2023. Applying the 2023 multiplier above, the adjustments for each penalty are summarized below.

Law	Penalty description	2022 Penalty	Penalty adjusted for 2023
Program Fraud Civil Remedies Act of 1986	Maximum Penalties for False Claims	$12,537	$13,508
Department of the Interior and Related Agencies Appropriations Act of 1989, Public Law 101–121, sec. 319.	Minimum Penalty for use of appropriated funds to lobby or influence certain contracts.	22,021	23,727

[1] *See* 28 U.S.C. 2461 note.

[2] Inflation Adjustment Act section 6, *codified at* 28 U.S.C. 2461 note.

Law	Penalty description	2022 Penalty	Penalty adjusted for 2023
Department of the Interior and Related Agencies Appropriations Act of 1989, Public Law 101–121, sec. 319.	Maximum Penalty for use of appropriated funds to lobby or influence certain contracts.	220,213	237,268
Department of the Interior and Related Agencies Appropriations Act of 1989, Public Law 101–121, sec. 319.	Minimum penalty for failure to report certain lobbying transactions.	22,021	23,727
Department of the Interior and Related Agencies Appropriations Act of 1989, Public Law 101–121, sec. 319.	Maximum penalty for failure to report certain lobbying transactions.	220,213	237,268

This rule codifies these civil penalty amounts by amending parts 1264 and 1271 of title 14 of the CFR.

III. Legal Authority and Effective Date

NASA issues this rule under the Federal Civil Penalties Inflation Adjustment Act of 1990,[3] as amended by the Debt Collection Improvement Act of 1996,[4] and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,[5] which requires NASA to adjust the civil penalties within its jurisdiction for inflation according to a statutorily prescribed formula.

Section 553 of title 5 of the United States Code generally requires an agency to publish a rule at least 30 days before its effective date to allow for advance notice and opportunity for public comments.[6] After the initial adjustment for 2016, however, the Civil Penalties Inflation Adjustment Act requires agencies to make subsequent annual adjustments for inflation ''notwithstanding section 553 of title 5, United States Code.'' Moreover, the 2023 adjustments are made according to a statutory formula that does not provide for agency discretion.

Accordingly, a delay in effectiveness of the 2023 adjustments is not required.

IV. Regulatory Requirements

Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a significant regulatory action under E.O. 12866 and was not reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.[7]

Paperwork Reduction Act

No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects in 14 CFR Parts 1264 and 1271

Claims, Lobbying, Penalties.

For the reasons stated in the preamble, NASA is amending 14 CFR parts 1264 and 1271 as follows:

PART 1264—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL PENALTIES ACT OF 1986

■ 1. The authority citation for part 1264 continues to read as follows:

Authority: 31 U.S.C. 3809, 51 U.S.C. 20113(a).

§ 1264.102 [Amended]

■ 2. In § 1264.102, in the undesignated paragraphs following paragraph (a)(1)(iv) and (b)(1)(ii), remove ''$12,537'' and add in its place ''$13,508''.

PART 1271—NEW RESTRICTIONS ON LOBBYING

■ 3. The authority citation for part 1271 continues to read as follows:

Authority: Section 319, Pub. L. 101–121 (31 U.S.C. 1352); Pub. L. 97–258 (31 U.S.C. 6301 *et seq.*)

§ 1271.400 [Amended]

■ 4. In § 1271.400:

■ a. In paragraphs (a) and (b), remove the words ''not less than $22,021 and not more than $220,213'' and add in their place the words ''not less than $23,727 and not more than $237,268.''

■ b. In paragraph (e), remove the two occurrences of ''$22,021'' and add in their place ''$23,727'' and remove ''$220,213'' and add in its place ''$237,268''.

Appendix A to Part 1271 [Amended]

■ 5. In appendix A to part 1271:

■ a. Remove ''$22,021'' everywhere it appears and add in its place ''$23,727.''

■ b. Remove ''$220,213'' everywhere it appears and add in its place ''$237,268.''

Nanette Smith,

Team Lead, NASA Directives and Regulations.

[FR Doc. 2023–08676 Filed 4–24–23; 8:45 am]

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[3] Public Law 101–410, 104 Stat. 890 (1990).

[4] Public Law 104–134, section 31001(s)(1), 110 Stat. 1321, 1321–373 (1996).

[5] Public Law 114–74, section 701, 129 Stat. 584, 599 (2015).

[6] *See* 5 U.S.C. 533(d).

[7] 5 U.S.C. 603(a), 604(a).

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2023–0176]

RIN 1625–AA08

Special Local Regulation; Sail Grand Prix, Season 3 Race Event, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation in the navigable waters of the San Francisco Bay in San Francisco, CA in support of the San Francisco Sail Grand Prix, Season 3 race periods. This special local regulation is necessary to provide for the safety of life on these navigable waters and to ensure the safety of mariners transiting the area from the dangers associated with high-speed sailing vessels participating in the Sail Grand Prix race event. This rulemaking will prohibit persons and vessels from entering, transiting through, anchoring, blocking, or loitering within the event area adjacent to the city of San Francisco waterfront near the Golden Gate Bridge and Alcatraz Island, unless authorized by the Captain of the Port San Francisco or a designated representative.

DATES: This rule is effective from May 4, 2023, through May 7, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0176 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call, or email Lieutenant Anthony I. Solares, U.S. Coast Guard Sector San Francisco Waterways Management Division; telephone 415–399–3585, email *SFWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
COTP Captain of the Port
PATCOM Patrol Commander
U.S.C. United States Code

II. Background Information and Regulatory History

On December 19, 2022, the Silverback Pacific Company notified the Coast Guard of an intention to conduct the ''Sail Grand Prix, Season 3'' in the San Francisco Bay. In response, on March 7, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Special Local Regulation; Sail Grand Prix, Season 3 Race Event; San Francisco, CA'' (88 FR 14309). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this proposed sailing race. During the comment period that ended April 7, 2023, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because in order to ensure the public and participant's safety we must establish the special local regulation before commencement of the Sail Grand Prix race activities starting May 4, 2023.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The COTP San Francisco has determined this special local regulation to be necessary to keep persons and vessels away from the sailing race vessels, which exhibit unpredictable maneuverability and have demonstrated a likelihood during the simulation of racing scenarios for capsizing. This special local regulation will help prevent injuries and property damage that may be caused upon impact with these fast-moving vessels. The provisions of this temporary Special Local Regulation will not exempt racing vessels from any Federal, State, or local laws or regulations, including Nautical Rules of the Road.

Under 33 CFR 100.35, the Coast Guard District Commander has authority to promulgate certain special local regulations deemed necessary to ensure the safety of life on the navigable waters immediately before, during, and immediately after an approved regatta. Pursuant to 33 CFR 1.05–1(i), the Commander of Coast Guard District 11 has delegated to the COTP San Francisco the responsibility of issuing such regulations.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM, which was published March 7, 2023. In the Discussion of the Proposed Rule section of the NPRM, we incorrectly stated the proposed rule would establish a waterfront passage area, which was not included further in the Discussion or the regulatory text. This was added in error. The Coast Guard does not intend to establish a waterfront passage area within this special local regulation. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a special local regulation associated with the Sail Grand Prix race event from noon to 5:30 p.m. each day from May 4, 2023, through May 7, 2023. The areas regulated by this special local regulation will be east of the Golden Gate Bridge, south of Alcatraz Island, west of Treasure Island, and in the vicinity of the city of San Francisco waterfront. The Coast Guard will establish an Official Practice Box Area, an Official Race Box Area, and a Spectator Area. An image of these proposed regulated areas may be found in the docket. The special local regulation will cover all navigable waters of the San Francisco Bay, from surface to bottom, within the area formed by connecting the following latitude and longitude points in the following order: 37°48′24.3″ N, 122°27′53.5″ W; thence to 37°49′15.6″ N, 122°27′58.1″ W; thence to 37°49′28.9″ N, 122°25′52.1″ W; thence to 37°49′7.5″ N, 122°25′13″ W; thence to 37°48′42″ N, 122°25′13″ W; thence to 37°48′30.5″ N, 122°26′22.6″ W; thence along the shore to 37°48′26.9″ N, 122°26′50.5″ W and thence to the point of beginning.

Located within this footprint, there will be three separate regulated areas: Zone ''A'', the Official Practice Box Area; Zone ''B'', the Official Race Box Area; and Zone ''C'', the Spectator Area.

Zone ''A'', the Official Practice Box Area, will be marked by colored visual markers. The position of these markers will be specified via Local Notice to Mariners at least two weeks prior to the event and via Broadcast Notice to Mariners at least seven days prior to the event. Zone ''A'' will be used by the race and support vessels during the official practice period on May 4, 2023, and May 5, 2023. Zone ''A'', the Official Practice Box Area, will be enforced during the official practices from noon to 5:30 p.m. on May 4, 2023, and from noon to 5:30 p.m. on May 5, 2023, or as announced via Broadcast Notice to Mariners. Excluding the public from entering Zone ''A'' is necessary to provide protection from the operation of the high-speed sailing vessels within this area.

Zone ''B'', the Official Race Box Area, will be marked by 12 or more colored visual markers. The position of these markers would be confirmed via Broadcast Notice to Mariners at least three days prior to the event. Only designated Sail Grand Prix race, support, and VIP vessels would be permitted to enter Zone ''B.'' Zone ''B,'' the Official Race Box Area, will be enforced during the official races from noon to 5:30 p.m. on May 6, 2023, and from noon to 5:30 p.m. on May 7, 2023. Because of the hazards posed by the sailing competition, excluding non-race vessel traffic from Zone ''B'' is necessary to provide protection from the operation of the high-speed sailing vessels within this area.

Zone ''C'', the Spectator Area, will be within the special local regulation area designated in paragraph (a) and outside of Zone ''B'', the Official Race Box Area. Zone ''C'' will be defined by latitude and longitude points per Broadcast Notice to Mariners. Zone ''C'' will be managed by marine event sponsor officials. Vessels will be prohibited from anchoring within the confines of Zone ''C.''

The duration of the establishment of the special local regulation is intended to ensure the safety of vessels in these navigable waters during the scheduled practice and race periods. This temporary special local regulation will temporarily restrict vessel traffic adjacent to the city of San Francisco waterfront in the vicinity of the Golden Gate Bridge and Alcatraz Island and prohibit vessels and persons not participating in the race event from entering the dedicated race area.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, locations, and duration of the special local regulation. With this special local regulation, the Coast Guard intends to maintain commercial access to the ports through an alternate vessel traffic management scheme. The special local regulation is limited in duration and is limited to a narrowly tailored geographic area with designated and adequate space for transiting vessels to pass when permitted by the COTP or a designated representative. In addition, although this rule restricts access to the waters encompassed by the special local regulation, the effect of this rule will not be significant because the local waterway users will be notified in advance via public Broadcast Notice to Mariners to ensure the special local regulation will result in minimal impact. Therefore, mariners will be able to plan and transit outside of the periods of enforcement of the special local regulation, or alternatively, they will be able to transit the city of San Francisco Waterfront with approval from the COTP or designated representative. The entities most likely to be affected are commercial vessels and pleasure craft engaged in recreational activities.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect owners and operators of commercial vessels and pleasure craft engaged in recreational activities and sightseeing for a limited duration. This special local regulation will not have a significant economic impact on a substantial number of small entities for the reasons stated in Section V.A above. When the special local regulation is in effect, vessel traffic can safely pass around the regulated area. The maritime public will be advised in advance of this special local regulation via Broadcast Notice to Mariners.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation that will create regulated areas of limited size and duration that includes defined regulated areas for vessel traffic to pass. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add § 100.T11–0122 to read as follows:

§ 100.T11–0122 Special Local Regulation; Sail Grand Prix 2022 Race Event, San Francisco, CA.

(a) Regulated area. The regulations in this section apply to all navigable waters of the San Francisco Bay, from surface to bottom, encompassed by a line connecting the following latitude and longitude points, beginning at 37°48′24.3″ N, 122°27′53.5″ W; thence to 37°49′15.6″ N, 122°27′58.1″ W; thence to 37°49′28.9″ N, 122°25′52.1″ W; thence to 37°49′7.5″ N, 122°25′13″ W; thence to 37°48′42″ N, 122°25′13″ W; thence to 37°48′30.5″ N, 122°26′22.6″ W; thence along shore to 37°48′26.9″ N, 122°26′50.5″ W and thence to the point of beginning.

(b) Definitions. As used in this section:

(1) ''*Designated Representative*'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel, or a Federal, State, or local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the special local regulation.

(2) *Zone* ''*A*'' means the Official Practice Box Area. This zone will encompass all navigable waters of the San Francisco Bay, from surface to bottom, within the area formed by connecting the following latitude and longitude points in the following order: 37°49′19″ N, 122°27′19″ W; thence to 37°49′28″ N, 122°25′52″ W; thence to 37°48′40.9″ N, 122°25′43.6″ W; thence to 37°49′7.5″ N, 122°25′13″ W and thence to the point of beginning. These coordinates are the current projected position for the Official Practice Box Area and will also be announced via Broadcast Notice to Mariners.

(3) *Zone* ''*B*'' means the Official Race Box Area, which will be marked by 12 or more colored visual markers within the special regulation area designated in paragraph (a). The position of these markers will be specified via Broadcast Notice to Mariners at least three days prior to the event.

(4) *Zone* ''*C*'' means the Spectator Area, which is within the special local regulation area designated in paragraph (a) and outside of Zone ''B,'' the Official Race Box Area. Zone ''C'' will be defined by latitude and longitude points via Broadcast Notice to Mariners and will be managed by marine event sponsor officials. Vessels shall not anchor within the confines of Zone ''C.''

(c) *Special Local Regulation.* The following regulations apply between noon and 5:30 p.m. on the Sail Grand Prix official practice and race days.

(1) Only support and race vessels will be authorized by the COTP or designated representative to enter Zone ''B'' during the race event. Vessel operators desiring to enter or operate with Zone ''A'' or Zone ''B'' must contact the COTP or a designated representative to obtain permission to do so. Persons and vessels may request permission to transit Zone ''A'' on VHF–23A.

(2) Spectator vessels in Zone ''C'' must maneuver as directed by the COTP or designated representative. When hailed or signaled by the COTP or designated representative by a succession of sharp, short signals by whistle or horn, the hailed vessel must come to an immediate stop and comply with the lawful direction issued. Failure to comply with a lawful direction may result in additional operating restrictions, citation for failure to comply, or both.

(3) Spectator vessels in Zone ''C'' must operate at safe speeds, which will create minimal wake.

(4) Vessels with approval from COTP or designated representative to transit through the associated event zones shall maintain headway and not loiter or anchor within the confines of the regulated area.

(5) Rafting and anchoring of vessels is prohibited within the regulated area.

(d) *Enforcement periods.* This special local regulation will be enforced for the official practices and race events from noon to 5:30 p.m. each day from May 4, 2023, through May 7, 2023. At least 24 hours in advance of the official practice and race events commencing on May 4, 2023, the COTP will notify the maritime community of periods during which these zones will be enforced via Broadcast Notice to Mariners and in writing via the Coast Guard Boating Public Safety Notice.

Dated: April 18, 2023.

Taylor Q. Lam,

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

[FR Doc. 2023–08662 Filed 4–24–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2023–0345]

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

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone in the navigable waters of Suisun Bay, off Concord, CA, in support of explosive on-loading to Military Ocean Terminal Concord (MOTCO) from April 26, 2023, through May 5, 2023. This safety zone is necessary to protect personnel, vessels, and the marine environment from potential explosion within the explosive arc. The safety zone is open to all persons and vessels for transitory use, but vessel operators desiring to anchor or otherwise loiter within the safety zone must obtain the permission of the Captain of the Port San Francisco or a designated representative. All persons and vessels operating within the safety zone must comply with all directions given to them by the Captain of the Port San Francisco or a designated representative.

DATES: The regulations in 33 CFR 165.1198 will be enforced from 12:01 a.m. on April 26, 2023, until 11:59 p.m. on May 5, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call, or email Lieutenant Anthony Solares, Coast Guard Sector San Francisco, Waterways Management Division, 415–399–3585, *SFWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone in 33 CFR 165.1198 for the Military Ocean Terminal Concord, CA (MOTCO) regulated area from 12:01 a.m. on April 26, 2023, until 11:59 p.m. on May 5, 2023, or as announced via marine local broadcasts. This safety zone is necessary to protect personnel, vessels, and the marine environment from potential explosion within the explosive arc. The

regulation for this safety zone, § 165.1198, specifies the location of the safety zone which encompasses the navigable waters in the area between 500 yards of MOTCO Pier 2 in position 38°03′30″ N, 122°01′14″ W and 3,000 yards of the pier. During the enforcement periods, as reflected in § 165.1198(d), if you are the operator of a vessel in the regulated area you must comply with the instructions of the COTP or the designated on-scene patrol personnel. Vessel operators desiring to anchor or otherwise loiter within the safety zone must contact Sector San Francisco Vessel Traffic Service at 415–556–2760 or VHF Channel 14 to obtain permission.

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

Dated: April 18, 2023.

Taylor Q. Lam,

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

[FR Doc. 2023–08661 Filed 4–24–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0343]

RIN 1625–AA87

Security Zones; Corpus Christi Ship Channel, Corpus Christi, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing three temporary, 500-yard radius, moving security zones for certain vessels carrying Certain Dangerous Cargoes (CDC) within the Corpus Christi Ship Channel and La Quinta Channel. The temporary security zones are needed to protect the vessels, the CDC cargo, and the surrounding waterway from terrorist acts, sabotage, or other subversive acts, accidents, or other events of a similar nature. Entry of vessels or persons into these zones is prohibited unless specifically authorized by the Captain of the Port Sector Corpus Christi or a designated representative.

DATES: This rule is effective without actual notice from April 25, 2023 until May 5, 2023. For the purposes of enforcement, actual notice will be used from April 20, 2023, until April 25, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Anthony Garofalo, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361–939–5130, email *Anthony.M.Garofalo@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Corpus Christi
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish these security zones by April 20, 2023 to ensure security of these vessels and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to provide for the security of these vessels.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Corpus Christi (COTP) has determined that potential hazards associated with the transit of the Motor Vessel (M/V) BRITISH CONTRIBUTOR, M/V CELCIUS CANBERRA and M/V ARISTARCHOS, when loaded, will be a security concern within a 500-yard radius of each vessel. This rule is needed to provide for the safety and security the vessels, their cargo, and surrounding waterway from terrorist acts, sabotage or other subversive acts, accidents, or other events of a similar nature while they are transiting within Corpus Christi, TX, from April 20, 2023 through May 5, 2023.

IV. Discussion of the Rule

The Coast Guard is establishing two 500-yard radius temporary moving security zones around M/V BRITISH CONTRIBUTOR, M/V CELCIUS CANBERRA and M/V ARISTARCHOS. The zones for the vessels will be enforced from April 20, 2023, through May 5, 2023. The duration of the zones are intended to protect the vessels and cargo and surrounding waterway from terrorist acts, sabotage or other subversive acts, accidents, or other events of a similar nature. No vessel or person will be permitted to enter the security zones without obtaining permission from the COTP or a designated representative.

Entry into these security zones is prohibited unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of USCG Sector Corpus Christi. Persons or vessels desiring to enter or pass through each zone must request permission from the COTP or a designated representative on VHF–FM channel 16 or by telephone at 361–939–0450. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate for the enforcement times and dates for each security zone.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under

Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, duration, and location of the security zones. This rule will impact a small, designated area of 500-yards around the moving vessels in the Corpus Christi Ship Channel and La Quinta Channel as the vessels transit the channel over a sixteen day period. Moreover, the rule allows vessels to seek permission to enter the zones.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves moving security zones lasting for the duration of time that the M/V BRITISH CONTRIBUTOR, M/V CELCIUS CANBERRA and M/V ARISTARCHOS are within the Corpus Christi Ship Channel and La Quinta Channel while loaded with cargo. It will prohibit entry within a 500-yard radius of M/V BRITISH CONTRIBUTOR, M/V CELCIUS CANBERRA and M/V ARISTARCHOS while the vessels are transiting loaded within Corpus Christi Ship Channel and La Quinta Channel. It is categorically excluded from further review under L60 in Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0343 to read as follows:

§ 165.T08–0343 Security Zones; Corpus Christi Ship Channel. Corpus Christi, TX.

(a) *Location.* The following area are moving security zones: All navigable waters encompassing a 500-yard radius around the M/V BRITISH CONTRIBUTOR, M/V CELCIUS CANBERRA and M/V ARISTARCHOS while the vessels are in the Corpus Christi Ship Channel and La Quinta Channel.

(b) *Enforcement period.* This section will be enforced from April 20, 2023 through May 5, 2023.

(c) *Regulations.* (1) The general regulations in § 165.33 of this part

apply. Entry into the zones is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Corpus Christi.

(2) Persons or vessels desiring to enter or pass through the zones must request permission from the COTP Sector Corpus Christi on VHF–FM channel 16 or by telephone at 361–939–0450.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate of the enforcement times and dates for these security zones.

Dated: April 19, 2023.

J.B. Gunning,

Captain, U.S. Coast Guard, Captain of the Port Sector Corpus Christi.

[FR Doc. 2023–08720 Filed 4–24–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 41

[Docket No. PTO–P–2023–0005]

RIN 0651–AD66

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

Correction

■ Rule document C1–2023–05382, appearing on page 19862, beginning in the first column, in the issue of Tuesday, April 4, 2023, is hereby withdrawn.

In rule document 2023–05382, appearing on pages 17147–17159, in the issue of Wednesday, March 22, 2023, make the following corrections:

■ On page 17157, in the first column, in instruction 8, the table heading for Table 3 to Paragraph (a)(1)(i)(C) and the table heading for Table 4 to Paragraph (a)(1)(ii) are corrected to read as follows:

§ 1.445 International application filing, processing and search fees. [Corrected]

(a) * * *

(1) * * *

(i) * * *

(C) * * *

TABLE 3 TO PARAGRAPH (a)(1)(i)(C)

* * * * *

(ii) * * *

TABLE 4 TO PARAGRAPH (a)(1)(ii)

* * * * *

[FR Doc. C2–2023–05382 Filed 4–24–23; 8:45 am]

BILLING CODE 0099–10–D

POSTAL SERVICE

39 CFR Part 111

Hardcopy Postage Statements Discontinued

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is amending *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) in various sections to discontinue the use of hardcopy postage statements for domestic commercial mailings.

DATES: *Effective:* January 28, 2024.

FOR FURTHER INFORMATION CONTACT: Michael Filipski at (312) 765–3089 or Garry Rodriguez at (202) 268–7281.

SUPPLEMENTARY INFORMATION: On February 13, 2023, the Postal Service published a notice of proposed rulemaking (88 FR 9218–9221) to discontinue the use of hardcopy postage statements for domestic commercial mailings. In response to the proposed rule, the Postal Service received 16 comments as follows:

Comment: Multiple comments stated eliminating hardcopy postage statements would make it so we cannot submit bulk mailings any longer.

Response: The **Federal Register** Notice proposed rule provided that Postal Wizard® and the Intelligent Mail® Small Business Tool (IMsb) are free and simple electronic documentation solutions available to all customers through the Business Customer Gateway, and that third-party software and mail preparation options are also available on the PostalPro website. In addition, all business mail entry unit (BMEU) employees are trained to assist customers with this transition.

Comment: The USPS should improve communications to the field, specifically requiring local postmasters where Periodical mail is entered to hold in-person meetings with mailers no later than 180 days before any implementation date of this proposal.

Response: Postal Service BMEU employees and managers began reaching out to customers and meeting with them well over a year before the date where we intend to no longer accept hardcopy postage statements. These efforts include weekly informational sessions on using the Intelligent Mail for Small Business Tool and Postal Wizard as well as targeted outreach to individual customers ensuring they know how to use the free electronic documentation options and which third part solutions are available. Internal information sessions and material is continually provided to all BMEU staff and postmasters to ensure they are aware of the changes and can decipher this information to our customers.

Comment: I do not have a computer and cannot submit my postage statement electronically.

Response: BMEUs where you currently bring your hardcopy statement will assist you with submitting a statement electronically.

Comment: Eliminating hardcopy postage statements will create an issue for mailers who mail non-identical pieces and must submit a hardcopy manifest.

Response: Postal Wizard, which is free electronic documentation software available on the Business Customer Gateway, allows for non-identical pieces as do many third-party options listed on PostalPro. The hardcopy manifest that must be accompanied with such a mailing will still be accepted; this FRN only covers postage statements themselves and does not prohibit hardcopy manifests.

Comment: The transition period should be continued through 2025.

Response: The Postal Service has ensured the local BMEUs have encouraged mailers to transition to electronic documentation for several years and official notice was provided 11 months prior to this transition. Given this and that there are various free and easy options to submit electronic documentation, the Postal Service believes January 2024 is sufficient time for hardcopy mailers to transfer.

Comment: The USPS should rapidly enhance the available of service data for newspaper mail. Better visibility.

Response: This comment is beyond the scope of this FRN. However, the Postal Service is exploring visibility enhancements for all our products.

The Postal Service is discontinuing the use of hardcopy postage statements to improve efficiency by expediting the acceptance of commercial mail. Except for Electronic Verification System (eVS®) mailings, all domestic commercial mailings must use an

approved electronic method to transmit a postage statement to the *PostalOne!* ® system.

The Postal Service provides free means of electronic postage statement submission through the Intelligent Mail for Small Business (IMsb) tool and Postal Wizard. There are also approved third party software options available on PostalPro at *postalpro.usps.com.*

The use of hardcopy postage statements for Every Door Direct Mail—Retail® (EDDM–R®) and international mailings will not be affected by this revision.

We believe this revision will provide customers with a more efficient mailing experience.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401–404, 414, 416, 3001–3018, 3201–3220, 3401–3406, 3621, 3622, 3626, 3629, 3631–3633, 3641, 3681–3685, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

200 Commercial Letters, Flats, and Parcels

* * * * *

203 Basic Postage Statement, Documentation, and Preparation Standards

1.0 Postage Statements

1.1 Completing Postage Statements

[Revise the first sentence of 1.1 to read as follows:]

Unless manifested using eVS under 705.2.9, any domestic mailing claiming a discount and all permit imprint mailings must be accompanied by a completed electronic postage statement (NOTE: Except for Every Door Direct Mail—Retail, all commercial references to ''postage statements'' in the DMM are electronic.). * * *

* * * * *

[Delete 1.3, Facsimile Postage Statements, in its entirety.]

* * * * *

3.0 Standardized Documentation for First-Class Mail, Periodicals, USPS Marketing Mail, and Flat-Size Bound Printed Matter

* * * * *

3.2 Format and Content

For First-Class Mail, Periodicals, USPS Marketing Mail, and Bound Printed Matter, standardized documentation includes:

* * * * *

e. * * * For Periodicals mailings, documentation also must provide:

* * * * *

[Delete the last sentence of item e4.]

* * * * *

230 Commercial Mail First-Class Mail

* * * * *

234 Postage Payment and Documentation

* * * * *

2.0 Affixing Postage to Presorted and Automation Letters and Flats

2.1 Affixing Postage for Presorted and Automation First-Class Mail

Except as permitted under 2.2 or authorized by the director, Business Acceptance Solutions, each piece must bear the numerical value of postage under one of these conditions:

* * * * *

[Revise the last sentence of item b to read as follows:]

b. * * * Additional postage must be paid at the time of mailing with an advance deposit account.

2.2 Affixing Postage at Less Than Full Price to All Pieces

* * * * *

2.2.1 Lowest Price

A mailer may affix postage evidencing postage at the lowest price as follows:

* * * * *

[Revise the last sentence of item b to read as follows:]

b. Additional postage: * * * The total additional postage must be paid by advance deposit account.

* * * * *

2.2.2 Mixed Price Alternative

[Revise the last sentence of 2.2.2 to read as follows:]

* * * The total additional postage must be paid by advance deposit account.

* * * * *

240 Commercial Mail USPS Marketing Mail

243 Prices and Eligibility

* * * * *

3.3 Additional Basic Standards for USPS Marketing Mail

Each USPS Marketing Mail mailing is subject to these general standards:

* * * * *

[Revise the first sentence of item h to read as follows:]

h. A completed postage statement using the correct USPS form must be submitted with each mailing. * * *

* * * * *

244 Postage Payment and Documentation

* * * * *

2.0 Additional Postage Payment Standards

2.1 Identical-Weight Pieces

[Revise the third sentence in 2.1 to read as follows:]

* * * If exact postage is not affixed, all additional postage and surcharges must be paid at the time of mailing with an advance deposit account. * * *

* * * * *

3.0 Affixing Postage at Less Than Full Price

* * * * *

3.2 Lowest Price

A mailer may affix metered postage at the lowest price on identical-weight pieces as follows:

* * * * *

[Revise the last sentence of item c to read as follows:]

c. Additional postage: * * * The total additional postage must be paid by advance deposit account.

* * * * *

3.3 Mixed Price Alternative for Letters and Flats

[Revise the last sentence of 3.3 to read as follows:]

* * * The total additional postage must be paid by advance deposit account.

* * * * *

245 Mail Preparation

* * * * *

6.0 Preparing Enhanced Carrier Route Letters

* * * * *

6.9 Delivery Sequence Documentation

6.9.1 Basic Standards

[Revise the third sentence of the introductory text of 6.9.1 to read as follows:]

* * * The mailer's electronic confirmation during eDoc submission certifies that this standard has been met when the corresponding mail is presented to the USPS. * * *

* * * * *

9.0 Preparing Enhanced Carrier Route Flats

* * * * *

9.10 Delivery Sequence Documentation

9.10.1 Basic Standards

[Revise the third sentence of the introductory text of 9.10.1 to read as follows:]

* * * The mailer's electronic confirmation during eDoc submission certifies that this standard has been met when the corresponding mail is presented to the USPS. * * *

* * * * *

12.0 Preparing Enhanced Carrier Route Product Sample Parcels

* * * * *

12.7 Delivery Sequence Documentation

12.7.1 General Standards

[Revise the third sentence of the introductory text of 12.7.1 to read as follows:]

* * * The mailer's electronic confirmation during eDoc submission certifies that this standard has been met when the corresponding mail is presented to the USPS. * * *

* * * * *

250 Commercial Mail Parcel Select

* * * * *

254 Postage Payment and Documentation

* * * * *

2.0 Mailing Documentation

2.1 Completing Postage Statements

[Revise the first sentence of 2.1 to read as follows:]

All metered and permit imprint mailings of 50 pieces or more, except manifested mail using eVS under 705.2.9, must be accompanied by a completed postage statement. * * *

* * * * *

602 Addressing

* * * * *

5.0 Move Update Standards

* * * * *

5.4 Mailer Certification

[Revise the text of 5.4 to read as follows:]

The mailer's electronic confirmation during eDoc submission certifies that the Move Update standard has been met for the address records, including each address in the corresponding mailing presented to the Postal Service.

* * * * *

6.0 ZIP Code Accuracy Standards

* * * * *

6.3 Mailer Certification

[Revise the text of 6.3 to read as follows:]

The mailer's electronic confirmation during eDoc submission certifies that the ZIP Code accuracy standard has been met for each address in the corresponding mailing presented to the USPS.

* * * * *

7.0 Carrier Route Accuracy Standard

* * * * *

7.4 Mailer Certification

[Revise the text of 7.4 to read as follows:]

The mailer's electronic confirmation during eDoc submission certifies that the carrier route accuracy standard has been met for each address in the corresponding mailing presented to the USPS.

* * * * *

8.0 Presort Accuracy Validation and Evaluation (PAVE)

8.1 Presort Accuracy Validation and Evaluation (PAVE)

* * * * *

8.1.2 Process

[Revise the second and third sentence of 8.1.2 to read as follows:]

* * * Vendors process the test file(s) through their presort software or hardware and return the resulting presort documentation to the USPS National Customer Support Center (NCSC) for evaluation of the answers. Each test file is evaluated for its accuracy of presort, compliance with current DMM standards, accuracy of sack/tray/pallet tag labels, and general acceptability of presort documentation. * * *

* * * * *

9.0 Coding Accuracy Support System (CASS)

* * * * *

9.3 Date of Address Matching and Coding

9.3.1 Update Standards

[Revise the seventh sentence in the introductory text of 9.3.1 to read as follows:]

* * * The mailer's electronic confirmation during eDoc submission certifies that this standard has been met when the corresponding mail is presented to the USPS. * * *

* * * * *

9.5 Documentation

9.5.1 Form 3553

[Revise the last sentence of 9.5.1 to read as follows:]

* * * The mailer certifies compliance with electronic confirmation during eDoc submission.

* * * * *

604 Postage Payment Methods and Refunds

* * * * *

3.0 Precanceled Stamps

3.1 General Information

* * * * *

3.1.8 Return Address

* * * Mailpieces bearing precanceled stamps and any return addresses outside the Post Office of mailing must meet one of the following standards:

* * * * *

[Revise item a to read as follows:]

a. At the time of mailing, the mailer must submit a copy of the postage statement and a sample mailpiece, enclosed in a stamped envelope and addressed to the postmaster at the Post Office of the return address.

* * * * *

607 Mailer Compliance and Appeals of Classification Decisions

1.0 Mailer Compliance With Mailing Standards

1.1 Mailer Responsibility

[Revise the third sentence of 1.1 to read as follows:]

* * * For mailings that require a postage statement, the mailer certifies compliance with all applicable postal standards with electronic confirmation during eDoc submission. * * *

1.2 Postage Payment

[Revise the last sentence of 1.2 to read as follows:]

* * * A USPS employee's acceptance of the postage statement and the subsequent acceptance of the mailing does not constitute verified accuracy of that statement and does not limit the

ability of the USPS to demand proper payment after acceptance when it becomes apparent such payment was not made.

* * * * *

700 Special Standards

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

2.0 Manifest Mailing System

* * * * *

2.2 Basic Standards

* * * * *

2.2.7 Postage Statement

[Revise the text of 2.2.7 by deleting the last two sentences.]

* * * * *

9.0 Combining Bundles of Automation and Nonautomation Flats in Trays and Sacks

9.1 First-Class Mail

9.1.1 Basic Standards

Bundles of flats in an automation price mailing prepared under 235.6.5 must be cotrayed with bundles of flats in a Presorted price mailing under the following conditions:

* * * * *

[Revise the first sentence of item h to read as follows:]

h. A complete postage statement, using the correct USPS form, must accompany each mailing job prepared under these procedures. * * *

* * * * *

9.3 USPS Marketing Mail

9.3.1 Basic Standards

Bundles of flats in an automation price mailing must be cosacked with bundles of flats in a Presorted price mailing under the following conditions:

* * * * *

[Revise the first sentence of item h to read as follows:]

h. A complete postage statement(s), using the correct USPS form, must accompany each mailing job prepared under these procedures. * * *

* * * * *

9.4 Bound Printed Matter

9.4.1 Basic Standards

Bundles of flat-size pieces in a Presorted price mailing qualifying for and claiming the barcode discount under 263.3.0, 263.2.0, and 263.5.0 must be cosacked with bundles of flat-size pieces from a Presorted price mailing (not claiming the barcode discount) under the following conditions:

* * * * *

[Revise the first sentence of item h to read as follows:]

h. A complete postage statement(s), using the correct USPS form, must accompany each mailing job prepared under these procedures. * * *

* * * * *

10.0 Merging Bundles of Flats Using the City State Product

10.1 Periodicals

10.1.1 Basic Standards

* * * Carrier route bundles in a carrier route mailing may be placed in the same sack or on the same pallet as 5-digit bundles from machinable (barcoded or nonbarcoded) price mailings (including pieces cobundled under 11.0) under the following conditions:

* * * * *

[Revise the first sentence of item i to read as follows:]

i. A complete postage statement(s), using the correct USPS form, must accompany each mailing job prepared under these procedures. * * *

* * * * *

10.2 USPS Marketing Mail

10.2.1 Basic Standards

Carrier route bundles from a carrier route price mailing may be placed in the same sack or on the same pallet as 5-digit bundles from an automation price mailing and 5-digit bundles from a Presorted price mailing (including pieces cobundled under 11.0) under the following conditions:

* * * * *

[Revise the text of item k to read as follows:]

k. A complete postage statement, using the correct USPS form, must accompany each mailing job prepared under these procedures.

* * * * *

12.0 Merging Bundles of Flats on Pallets Using a 5% Threshold

12.1 Periodicals

12.1.1 Basic Standards

* * * Five-digit bundles from a barcoded price mailing and 5-digit bundles from a nonbarcoded price mailing (including pieces cobundled under 11.0) may be placed on the same pallet as carrier route bundles under the following conditions:

* * * * *

[Revise the first sentence in the introductory text of item f to read as follows:]

f. A complete postage statement, using the correct USPS form, must accompany each mailing job. * * *

* * * * *

12.2 USPS Marketing Mail

12.2.1 Basic Standards

* * * Five-digit bundles from an automation price mailing and 5-digit bundles from a Presorted price mailing (including pieces cobundled under 11.0) may be placed on the same pallet as carrier route bundles under the following conditions:

* * * * *

[Revise the text of item j to read as follows:]

j. A complete postage statement, using the correct USPS form, must be submitted for each mailing job prepared under these procedures.

* * * * *

13.0 Merging Bundles of Flats on Pallets Using the City State Product and a 5% Threshold

13.1 Periodicals

13.1.1 Basic Standards

* * * Five-digit bundles from a barcoded price mailing and 5-digit bundles from a nonbarcoded price mailing (including pieces cobundled under 11.0) may be placed on the same pallet as carrier route bundles under the following conditions:

* * * * *

[Revise the first sentence in the introductory text of item g to read as follows:]

g. A complete postage statement, using the correct USPS form, must be submitted for each mailing job. * * *

* * * * *

13.2 USPS Marketing Mail

13.2.1 Basic Standards

* * * Five-digit bundles from an automation price mailing and 5-digit bundles from a Presorted price mailing (including pieces cobundled under 11.0) may be placed on the same pallet as carrier route bundles under the following conditions:

* * * * *

[Revise the text of item k to read as follows:]

k. A complete postage statement, using the correct USPS form, must be submitted for each mailing job prepared under these procedures.

* * * * *

17.0 Plant-Verified Drop Shipment

* * * * *

17.2 Program Participation

* * * * *

17.2.3 Verification at Origin BMEU

PVDS verification can be performed at the origin business mail entry unit (BMEU) under these conditions:

* * * * *

[Revise the text of item d to read as follows:]

d. Form 8125 accompanies each PVDS (or segment, if the PVDS is contained in more than one vehicle).

* * * * *

Tram T. Pham,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2023–08620 Filed 4–24–23; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA–R01–OAR–2022–0961, FRL–10562–02–R1]

Approval and Promulgation of Air Quality Implementation Plan; Mohegan Tribe of Indians of Connecticut

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving amendments to the Mohegan Tribe of Indians of Connecticut (the Mohegan Tribe, Mohegans, or the Tribe) Tribal Implementation Plan (TIP) under the Clean Air Act (CAA) to regulate air pollution within the exterior boundaries of the Tribe's reservation. EPA approved the Tribe for treatment in the same manner as a State (Treatment as State or TAS) for purposes of administering New Source Review (NSR) under the CAA on December 26, 2006. The TIP revisions we are approving include permitting requirements for minor sources of air pollution not covered by the Tribe's existing federally approved NSR permitting program. The purpose of the TIP revisions is to enable the Tribe to attain and maintain the National Ambient Air Quality Standards (NAAQS) within the exterior boundaries of its reservation by establishing new elements to its federally enforceable preconstruction air permitting program.

DATES: This rule is effective on May 25, 2023.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2022–0961. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* 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 at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that, if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Madeline Isenberg, Air Permits, Toxics, and Indoor Programs Branch, EPA Region 1, 5 Post Office Square (Mail Code: MI–5), Boston, MA, 02109–3912, telephone number (617) 918–1271, email: *Isenberg.Madeline@epa.gov.*

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

Table of Contents

I. Background and Purpose
II. Response to Comments
III. Final Action
IV. Incorporation by Reference
V. Statutory and Executive Order Review

I. Background and Purpose

On February 13, 2023 (88 FR 2298), EPA published a notice of proposed rulemaking (NPRM) for TIP revisions submitted by the Mohegan Tribe of Indians of Connecticut for approval under section 110 of the CAA. The TIP revisions address attainment and maintenance of the NAAQS within the exterior boundaries of its reservation by establishing new elements to its federally enforceable preconstruction air permitting program.

The Mohegan Tribe of Indians of Connecticut is an Indian Tribe federally recognized on March 7, 1994, by congressional legislation (Pub. L. 103–377, October 19, 1994.). The Secretary of the Interior recognizes the ''Mohegan Tribe of Connecticut'' (86 FR 7554, January 29, 2021). On May 4, 2005, the Mohegan Tribe of Indians of Connecticut submitted a request that we find the Tribe eligible for TAS pursuant to section 301(d)(2) of the CAA and title 42, part 49 of the Code of Federal Regulations (CFR), for the purpose of implementing its CAA permitting program. The Mohegans also submitted for EPA approval its TIP on May 4, 2005.

The Tribe requested a TAS eligibility determination pursuant to the CAA and the Tribal Authority Rule (''TAR'') for the purpose of administering its TIP within reservation lands. The operative portion of the Mohegan TIP was the Tribe's Area Wide NO_X Emission Limitation Regulation.

The Tribe formally submitted the applicable elements of its TIP revision to EPA Region 1 on July 28, 2022.

The rationale for EPA's proposed approval of the Mohegan TIP is explained in the NPRM and will not be restated here. No adverse public comments were received on the NPRM.

II. Response to Comments

EPA received one comment during the comment period, which supported EPA's proposed action. As such, this comment does not require further response to finalize the action as proposed. The comment is available in the docket for this action.

III. Final Action

EPA is approving the Mohegan TIP revisions under the Clean Air Act to regulate air pollution within the exterior boundaries of the Tribe's reservation. The TIP revisions include the addition of a source registration program for new and existing sources, a minor NSR permitting program, and provisions to obtain a potential to emit limit to render a source non-major for new and existing sources. The revisions also outline a process by which the Mohegan Tribe can establish permit by rules, and the Tribe has adopted one permit by rule into its body of regulations for gasoline dispensing facilities as part of these revisions.

IV. 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, the EPA is finalizing the incorporation by reference of the Mohegan Tribe's Resolution No. 2022–31, which incorporates Article XIII–A and establishes a minor NSR preconstruction permitting program and allows for sources that would otherwise be major to take restrictions on their potential to emit to below major source thresholds, as described in the amendments to 40 CFR part 49 set forth below. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 1 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 TIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the TIP compilation.[1]

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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).

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 June 26, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 49

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

Dated: April 17, 2023.

David Cash,

Regional Administrator, EPA Region 1.

Part 49 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 49—INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT

■ 1. The authority citation for part 49 continues to read as follows:

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

Subpart D—Implementation Plans for Tribes—Region 1

■ 2. Section 49.201 is amended by revising paragraph (c) to read as follows:

§ 49.201 Identification of plan.

* * * * *

(c) *EPA-approved regulations.*

EPA-APPROVED MOHEGAN TRIBE OF INDIANS OF CONNECTICUT REGULATIONS

Tribal citation	Title/subject	Tribal effective date	EPA approval date	Explanations
Memorandum of Agreement.	Memorandum of Agreement dated December 26, 2006, between the Mohegan Tribe of Indians of Connecticut and the U.S. Environmental Protection Agency Region I.	12/26/06	11/14/07, 72 FR 63988.	
Mohegan Tribal Resolution No. 2009–28.	Approval of Amended Tribal Air Program Area Wide NO_X Emission Limitation Regulation.	02/18/2009	09/29/09, 74 FR 49327.	Mohegan Tribal Resolution 2009–28 includes the ''Area Wide NO_X Emission Limitation Regulation.''
Mohegan Tribal Gaming Authority Resolution MTGA 2009–07.	Confirmation and Approval of Amended Tribal Air Program ''Area Wide NO_X Emission Limitation Regulation''.	2/18/2009	09/29/09, 74 FR 49327.	

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

EPA-APPROVED MOHEGAN TRIBE OF INDIANS OF CONNECTICUT REGULATIONS—Continued

Tribal citation	Title/subject	Tribal effective date	EPA approval date	Explanations
Mohegan Tribal Resolution No. 2022–31.	Article XIII–A. Minor New Source Review Program.	04/06/2022	4/25/2023, [Insert **Federal Register** citation].	The TIP revision includes the addition of a source registration program, a minor NSR permitting program, provisions to obtain a potential to emit limit to render a source non-major, a process by which the Mohegan Tribe can establish permit by rules, and a permit by rule for gasoline dispensing facilities.

[FR Doc. 2023–08527 Filed 4–24–23; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2021–0214; FRL–9407–02–R6]

Air Plan Approval; Oklahoma; Revisions to Air Pollution Control Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving revisions to the State Implementation Plan (SIP) for Oklahoma, submitted to the EPA by the State of Oklahoma designee (''the State'') on February 9, 2021. The SIP revisions being approved address Open Burning, Control of Emission of Volatile Organic Compounds (VOC), and Specialty Coatings VOC Content Limits.

DATES: This rule is effective on May 25, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID EPA–R06–OAR–2021–0214. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For information on the revisions addressing open burning, please contact Ms. Carrie Paige, Region 6 Office, Infrastructure and Ozone Section, 214–665–6521, *paige.carrie@epa.gov.* For information on the revisions addressing emissions of VOC, please contact Mr. Emad Shahin, EPA Region 6 Office, Infrastructure and Ozone Section, 214–665–6717, *shahin.emad@epa.gov.* Out of an abundance of caution for members of the public and staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID–19. The EPA encourages the public to submit comments via *https://www.regulations.gov.* Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

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

I. Background

The background for this action is discussed in detail in our February 3, 2023, proposal (88 FR 7384).[1] In that document, we proposed to approve a portion of the revisions to the Oklahoma SIP submitted on February 9, 2021. Our February 2023 proposal addressed only the portion of the submittal that referred to the Oklahoma Administrative Code (OAC) Title 252, Chapter 100 (denoted OAC 252:100), Subchapters 13, 37, and 39, and Appendix N. The remainder of the submitted revisions were addressed in a separate rulemaking action.[2]

The revisions to Subchapter 13, which addresses Open Burning (denoted 252:100–13), include but are not limited to, requiring inspection and removal of materials containing asbestos, asphalt, and lead in structures prior to fire training; requiring use of air curtain incinerators (ACIs) in specified areas; and add a provision for open burning of certain medical marijuana plant refuse.

The revisions to Subchapter 37 (252:100–37), which addresses Control of Emission of Volatile Organic Compounds (VOC), add a new section to control VOC emissions from aerospace industries coatings operations, for new and existing aerospace vehicle and component coating operations. The revisions to Subchapter 39 (252:100–39), which address Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas, include but are not limited to incorporating the Aerospace national emission standards for hazardous air pollutants (NESHAP) (40 CFR part 63, subpart GG). The revisions also added Appendix N (Specialty Coatings VOC Content Limits) to the SIP.

The revisions addressed in our February 2023 proposal add clarity, consistency, and stringency to the Oklahoma SIP. The revisions do not relax the current SIP rules and are consistent with Federal regulations at 40 CFR parts 60 and 61 and 40 CFR part 63, subparts GG and WWWW. Therefore, and consistent with CAA section 110(l), we do not expect these revisions to interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. More detail on these revisions is provided in the docket for this action.

Our February 2023 proposal provided a detailed description of the revisions and the rationale for the EPA's proposed actions, together with a discussion of the opportunity to comment. The public comment period for our February 2023 proposal closed on March 6, 2023. We received one supporting comment from an anonymous source. No adverse comment was received. Therefore, we are finalizing this action as proposed.

II. Final Action

We are approving portions of a SIP revision submitted to the EPA by the State of Oklahoma on February 9, 2021. Specifically, we are approving the revisions to OAC 252:100, Subchapters 13 (Open Burning), 37 (Control of Emission of Volatile Organic Compounds (VOCs)), 39 (Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former

[1] Henceforth referred to as our ''February 2023'' proposal. Our February 2023 proposal includes technical support documents, which are posted in the docket for this action.

[2] See 87 FR 50263 (August 16, 2022).

Nonattainment Areas), and Appendix N (Specialty Coatings VOC Content Limits). We are approving these revisions in accordance with section 110 of the Act.

III. Environmental Justice Considerations

As stated in our February 2023 proposal and posted in the docket for this action, EPA reviewed demographic data, which provides an assessment of individual demographic groups of the populations living within the state of Oklahoma. EPA then compared the data to the national average for each of the demographic groups. The results of this analysis are being provided for informational and transparency purposes. The results of the demographic analysis indicate that, for populations within the state of Oklahoma, the percent people of color (persons who reported their race as a category other than White alone (not Hispanic or Latino)) is less than the national average (38.5 percent versus 43.1 percent). Within people of color, the percent of the population that is Black or African American alone is less than the national average (7.8 percent versus 13.6 percent) and the percent of the population that is American Indian/Alaska Native is greater than the national average (9.7 percent versus 1.3 percent). The percent of the population that is two or more races is greater than the national average (6.6 percent versus 2.9 percent). The percent of people living in poverty in Oklahoma is greater than the national average (15.6 percent versus 11.6 percent).

The Oklahoma Department of Environmental Quality (ODEQ) did not evaluate environmental justice considerations as part of their SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA performed an environmental justice analysis, as is described above. The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action.

This final action approves new rules into the Oklahoma SIP that are anticipated to control emissions from open burning and certain activities whose emissions include VOC. Open burning may emit particle pollution and VOC is a precursor to ozone formation. Information on particle pollution and ozone, and the associated negative health impacts of these pollutants can be found at *https://www.epa.gov/pm-pollution* and *https://www.epa.gov/ground-level-ozone-pollution*.[3] We expect that this action and the resulting emissions reductions will generally be neutral or contribute to reduced environmental and health impacts on all populations in Oklahoma, including indigenous people, people of color, and low-income populations. There is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people. EPA offered consultation on our proposed rulemaking to tribal governments that may be affected by this action.[4] We received one request for tribal consultation from the Muscogee Nation and provided such on February 14, 2023.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference the revisions to the Oklahoma regulations, as identified in Section II of this preamble, Final Action. The revised regulations address open burning, VOC emissions, and specialty coatings VOC content limits. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under CAA sections 110 and 113 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.

V. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), the EPA offered consultation (by letter dated February 1, 2023) on our proposed rulemaking to tribal governments that may be affected by this action. We received a request for formal tribal consultation from the Muscogee Nation

[3] See, also, 78 FR 3086 (January 15, 2013) and 80 FR 65292 (October 26, 2015).

[4] See invitation for consultation, dated February 1, 2023, in the docket for this action.

and provided consultation on February 14, 2023.

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

The Oklahoma Department of Environmental Quality did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA performed an EJ analysis, as is described earlier in the section titled ''Environmental Justice Considerations.'' The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 26, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: April 17, 2023.

Earthea Nance,

Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart LL—Oklahoma

■ 2. In § 52.1920, the table in paragraph (c) titled ''EPA Approved Oklahoma Regulations'' is amended by:

■ a. Under Subchapter 13:

■ i. Revising the entries for 252:100–13–2, 252:100–13–5, 252:100–13–7, 252:100–13–8;

■ ii. Adding an entry for 252:100–13–8.1 in numerical order; and

■ iii. Revising the entry for 252:100–13–9;

■ b. Revising the heading for Subchapter 37 and adding an entry for 252:100–37–27 in numerical order under Subchapter 37;

■ c. Revising the heading for Subchapter 39 and the entry for 252:100–39–47 and removing the entry for 252:100–39–49 under Subchapter 39; and

■ d. Adding in alphanumerical order an entry for 252:100, Appendix N under Appendices for OAC 252: Chapter 100.

The revisions and additions read as follows:

§ 52.1920 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED OKLAHOMA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter 100 (OAC 252:100). Air Pollution Control				
*	*	*	*	*
Subchapter 13. Open Burning				
*	*	*	*	*
252:100–13–2	Definitions	9/15/2020	4/25/2023 [Insert **Federal Register** citation].	
252:100–13–5	Open burning prohibited	9/15/2020	4/25/2023 [Insert **Federal Register** citation].	
252:100–13–7	Allowed open burning	9/15/2020	4/25/2023 [Insert **Federal Register** citation].	
252:100–13–8	Use of air curtain incinerators	9/15/2020	4/25/2023 [Insert **Federal Register** citation].	

EPA APPROVED OKLAHOMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
252:100–13–8.1	Transported material	9/15/2020	4/25/2023 [Insert **Federal Register** citation].	
252:100–13–9	General conditions and requirements for allowed open burning.	9/15/2020	4/25/2023 [Insert **Federal Register** citation].	
*	*	*	*	*
Subchapter 37. Control of Emission of Volatile Organic Compounds (VOC)				
*	*	*	*	*
Part 5. Control of VOCs in Coating Operations				
*	*	*	*	*
252:100–37–27	Control of emission of VOCs from aerospace industries coatings operations.	9/15/2020	4/25/2023 [Insert **Federal Register** citation].	
*	*	*	*	*
Subchapter 39. Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas				
*	*	*	*	*
Part 7. Specific Operations				
*	*	*	*	*
252:100–39–47	Control of VOC emissions from aerospace industries coatings operations.	9/15/2020	4/25/2023 [Insert **Federal Register** citation].	
*	*	*	*	*
Appendices for OAC 252: Chapter 100				
*	*	*	*	*
252:100, Appendix N	Specialty Coatings VOC Content Limits	9/15/2020	4/25/2023 [Insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

[FR Doc. 2023–08438 Filed 4–24–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 230420–0107]

RIN 0648–BL29

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Vermilion Snapper Harvest Levels

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement management measures described in a framework action under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule revises the annual catch limit (ACL) for vermilion snapper in the Gulf of Mexico (Gulf). The purpose of this final rule is to prevent overfishing of Gulf vermilion snapper and to achieve optimum yield (OY).

DATES: This final rule is effective May 25, 2023.

ADDRESSES: Electronic copies of the framework action, which includes an environmental assessment, a fishery impact statement, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/modification-gulf-mexico-vermilion-snapper-overfishing-limit-acceptable-biological-catch-and?check_logged_in=1.*

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, Southeast Regional Office, NMFS, telephone: 727–824–5305; email: *rich.malinowski@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery, which includes vermilion snapper, under the FMP. The Council

prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the OY from federally managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

On December 6, 2022, NMFS published a proposed rule for the framework action and requested public comment (87 FR 74588). The proposed rule and the framework action outline the rationale for the actions contained in this final rule. A summary of the management measures described in the framework action and implemented by this final rule is described below.

All weights described in this final rule are in round weight.

The current catch limits were specified in Amendment 47 to the FMP (83 FR 22210, May 14, 2018) and are based on the results of the 2016 Southeast Data Assessment Review (SEDAR) stock assessment (SEDAR 45), and the recommendations of the Council's Scientific and Statistical Committee (SSC). The SSC recommended a declining overfishing limit (OFL) and the OFL for 2021 and beyond specified in Amendment 47 is 3,490,000 lb (1,623,861 kg). The SSC also provided two recommendations for the acceptable biological catch (ABC): one derived from fishing at 75 percent of the MSY proxy, which declined from 2017 through 2021, and one derived using the average of the 2017–2021 ABCs, which resulted in a constant ABC. The Council chose to adopt the constant catch ABC of 3,110,000 lb (1,410,672 kg), and set the annual catch limit (ACL) equal to the ABC. Vermilion snapper annual landings have been less than this ACL since the implementation of the stock ACL in 2012, with the exception of 2018 when it was exceeded by 3 percent.

In 2020, a new assessment (SEDAR 67) was completed for vermilion snapper using data through the 2017 fishing year. The SEDAR 67 results indicate the stock is not overfished and not experiencing overfishing. SEDAR 67 included new data sources, including historical recreational catch and effort data adjusted to be consistent with the Marine Recreational Information Program (MRIP) Fishing Effort Survey (FES). MRIP transitioned from the legacy Coastal Household Telephone Survey (CHTS) to the new FES mail survey. The FES was launched in 2015, and replaced the CHTS in 2018. Both survey methods collect data needed to estimate marine recreational fishing effort by private anglers on the Atlantic and Gulf coasts. The CHTS used random-digit dialing of homes in coastal counties to contact fishermen. The new mail-based FES uses fishing license and registration information as one way to identify and contact fishermen (supplemented with data from the U.S. Postal Service). MRIP–FES landings estimates are generally greater than those generated by MRIP–CHTS and NMFS developed a calibration model to allow estimates produced by either survey to be adjusted and be consistent with the estimates produced by the other survey.

To determine how the inclusion of FES-adjusted landings estimates in SEDAR 67 impacted the catch projections for vermilion snapper, the previously accepted assessment model used in SEDAR 45 was updated using the FES data. The same 5-year (2017–2021) average used to set the current ABC was applied to the revised SEDAR 45 projections. This resulted in an FES-based OFL estimate of 6,760,000 lb (3,066,284 kg), which is almost double the current OFL of 3,490,000 lb (1,623,861 kg). Thus, using FES landings estimates in the SEDAR 45 model indicate that the OFL would have been much higher had FES data been available at the time the previous assessment was completed.

The SSC reviewed SEDAR 67, agreed that vermilion snapper is not overfished or undergoing overfishing, and reviewed the SEDAR 67 projections. Due to the uncertainty in the SEDAR 67 assessment and recent recruitment, the SSC determined that the catch levels should be based on the average of the projections from 2021–2025, and recommended an increase in the OFL to 8,600,000 lb (3,900,894 kg) and an increase in the ABC to 7,270,000 lb (3,297,617 kg).

The Council's Reef Fish Advisory Panel (AP) reviewed the SSC recommendations and expressed concerns about setting the ACL equal to the ABC, noting that recent landings have been relatively low. Using MRIP–FES estimates, recreational landings from 2012 through 2020 have generally been below 4,000,000 lb (1,814,369 kg), with the highest landings occurring in 2018 at approximately 4,380,000 lb (1,986,735 kg). The AP recommended that the stock ACL be set at 75 percent of the ABC and the Council agreed with the AP's recommendation. Based on the recommendations from the SSC and the AP, the Council chose to update the catch limits and approved the framework action at its January 2022 meeting.

Management Measures Contained in This Final Rule

This final rule revises the ACL for the Gulf vermilion snapper stock. The current stock ACL for Gulf vermilion snapper is 3.11 million lb (1.41 million kg), is equal to the ABC, and is based on the results of SEDAR 45, which used data from MRIP–CHTS. This final rule increases the total ACL for Gulf vermilion snapper from 3.11 million lb (1.41 million kg) to 5,452,500 lb (2,473,212 kg). The revised ACL is based on SEDAR 67, which used MRIP–FES recreational landing estimates and is equal to 75 percent of the ABC.

Comments and Responses

NMFS received a total of three comments on the proposed rule for the framework action. One comment was not related to the proposed rule or the framework action and suggested recreational bag limit changes for Gulf lane snapper. That comment is not addressed further in this final rule. Specific comments related to the proposed rule and the framework action are grouped as appropriate and responded to below.

Comment 1: The proposed increase to the stock ACL is too high. A better approach would be to increase the ACL gradually over several years while monitoring the ACL to prevent overfishing.

Response: NMFS does not agree that the increase to the stock ACL is too high. Vermilion snapper is not overfished or undergoing overfishing. Further, although the new stock ACL of 5,452,500 lb (2,473,212 kg) is 57 percent greater than the previous ACL of 3.11 million lb (1.41 million kg), the new ACL takes into account scientific and management uncertainty, as well as the change from MRIP–CHTS to MRIP–FES to estimate recreational landings. The Council's SSC recommended an OFL of 8,600,000 lb (3,900,894 kg), which is well above the SSC's ABC recommendation of 7,270,000 lb (3,297,617 kg). This buffer between the OFL and the ABC accounts for scientific uncertainty and reduces the likelihood of overfishing. The Council accounted for management uncertainty and further reduced the likelihood of overfishing by setting the stock ACL 25 percent below

the ABC. Under the current accountability measures, NMFS monitors landings and prohibits harvest of vermilion snapper if the combined commercial and recreational landings reach, or are projected to reach, the stock ACL. In addition, harvest projections from SEDAR 67 used MRIP–FES recreational landings estimates rather than MRIP–CHTS, as used in SEDAR 45. As discussed above, if MRIP–FES landing estimates had been used in SEDAR 45 the current OFL would have been 6,760,000 lb (3,066,284 kg), which is almost double the current OFL of 3,490,000.

Comment 2: Although the vermilion snapper stock assessment supported a significant increase in the catch levels, the terminal year of data used in the assessment was 2017 and recent observations by fishermen indicate that the current stock may not be able to support this increase. The large increase in the stock ACL could also shift more effort to vermilion snapper, jeopardizing the health of the stock.

Response: NMFS understands the concern about the time it takes to conduct a stock assessment and then use that information for management changes. However, both the SEDAR stock assessment and the Council process are structured to allow the opportunity for scientific, management, and public review and comment. These assessment reviews often take several meetings to complete. The most recent stock assessment for vermilion snapper was completed in 2020 (SEDAR 67), and involved several webinars, including 3 data review webinars. A draft assessment report was then reviewed and edited by the assessment panel prior to submission to the Council. The Council's SSC and the Council reviewed the assessment in June 2020, and the Council then began the process of updating management based in the results of the assessment.

In determining the appropriate catch limits, the Council considered the input of fishermen through their Reef Fish AP and public testimony. The Council's Reef Fish AP recommended that the stock ACL for be set at 75 percent of the ABC based on recorded vermilion snapper landings, which have been relatively low when compared to the new ABC, and concern regarding the status of the stock and harvest levels. The AP also noted that while exceptionally high vermilion snapper recruitment was recorded in recent years, the stock may not be able to sustain the ACL increases considered in the framework action. The majority of public comments provided during the January 2022 Council meeting supported the ACL recommended by the AP. The Council concurred with the Reef Fish AP and the majority of public comments and selected a more conservative stock ACL to provide more protection to the vermilion snapper stock.

NMFS agrees that the increase in the vermilion snapper stock ACL could cause effort to shift from other reef fish species to vermilion snapper. However, given the multi-species nature of the reef fish fishery and the availability of other species to harvest throughout the year, as well as the magnitude of historical landings, it is unlikely that a shift in effort would be significant enough to result in landings exceeding the new ACL. As explained in the response to *Comment 1,* the Council set the new ACL at a conservative level to help ensure that the increase in allowable harvest would not risk the health of the stock.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the framework action, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

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

The Magnuson-Stevens Act provides the legal basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule. This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995. A description of this final rule, why it is being considered, and the purposes of this final rule are contained in the preamble and in the **SUMMARY** section of this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility act analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

Annual catch limits, Fisheries, Fishing, Gulf, Reef fish, Vermilion snapper.

Dated: April 20, 2023.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, NMFS amends 50 CFR part 622 as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.41, revise the last sentence of paragraph (j) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(j) * * * The stock ACL for vermilion snapper is 5,452,500 lb (2,473,212 kg), round weight.

* * * * *

[FR Doc. 2023–08707 Filed 4–24–23; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 79
Tuesday, April 25, 2023

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

[NRC–2022–0218]

RIN 3150–AK91

Reporting Nuclear Medicine Injection Extravasations as Medical Events; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Preliminary proposed rule language; notice of availability and public meeting; correction.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting a notice that was published in the **Federal Register** on April 19, 2023, making available preliminary proposed rule language for a rulemaking on the reporting of nuclear medicine injection extravasations as medical events. This action is necessary to correct the time of the public meeting.

DATES: The correction takes effect on April 25, 2023.

ADDRESSES: Please refer to Docket ID NRC–2022–0218 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0218. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions, contact the individuals 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 ''ADAMS Public Documents'' and then 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.*
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. eastern time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Irene Wu, telephone: 301–415–1951, email: *Irene.Wu@nrc.gov;* and Daniel DiMarco, telephone: 301–415–3303, email: *Daniel.Dimarco@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: The NRC is announcing the following corrected language to proposed rule FR Doc. 2023–08238, published at 88 FR 24130 on April 19, 2023. On page 24130, in the first column, Dates section, the public meeting time is corrected to read ''from 1:00 p.m. to 4:00 p.m. eastern time (ET)''. On page 24132, in the second column, section V. Public Meeting, the second sentence in the first paragraph is corrected to read ''The public meeting will be held on May 24, 2023, from 1:00 p.m. to 4:00 p.m. ET on the Microsoft Teams online platform.''.

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2022–0218. In addition, the Federal rulemaking website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) navigate to the docket folder (NRC–2011–0014; NRC–2011–0015; NRC–2011–0017; NRC–2011–0018); (2) click the ''Subscribe'' link; and (3) enter an email address and click on the ''Subscribe'' link.

Dated: April 19, 2023.

For the Nuclear Regulatory Commission.

Cindy K. Bladey,

Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Environmental, and Financial Support Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2023–08685 Filed 4–24–23; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0935; Project Identifier MCAI–2022–01311–T]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Bombardier, Inc., Model BD–100–1A10 airplanes. This proposed AD was prompted by an in-service event where the nose gear door amber caution message displayed on the crew alerting system during the initial climb after gear retraction. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by June 9, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0935; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* website *bombardier.com*.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Gabriel D. Kim, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–0935; Project Identifier MCAI–2022–01311–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Gabriel D. Kim, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2022–57, dated October 5, 2022 (Transport Canada AD CF–2022–57) (also referred to after this as the MCAI), to correct an unsafe condition for all Bombardier, Inc., Model BD–100–1A10 airplanes. The MCAI states an in-service event occurred where the nose gear door amber caution message displayed on the crew alerting system during the initial climb after gear retraction. After landing, an inspection found that one of the nose landing gear (NLG) door hinge fitting assemblies was broken. The absence of an inspection to detect cracks in the fillet radii of the NLG door hinge fitting could result in door misalignment with the airplane.

The FAA is proposing this AD to address cracked fillet radii of NLG door hinge fittings. The unsafe condition, if not addressed, could result in a NLG door misalignment, which could increase the drag and yawing movement during flight, could cause jamming of the door affecting the ability to extend or retract the NLG, or could potentially result in the NLG door detaching from the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0935.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Bombardier Challenger 300 BD–100 Time Limits/Maintenance Checks Temporary Revision (TR) TR5–2–101, dated June 30, 2022; and (Bombardier) Challenger 350 BD–100 Time Limits/Maintenance Checks Temporary Revision TR5–2–30, dated June 30, 2022. This service information specifies new or more restrictive airworthiness limitations for the NLG door hinge fittings fillet radii. These documents are distinct because they apply to different airplane configurations.

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

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (i)(1) of this proposed AD.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 716 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA has determined that revising the maintenance or inspection program

takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the agency estimates the average total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Bombardier, Inc., Docket No. FAA–2023–0935; Project Identifier MCAI–2022–01311–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by June 9, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Bombardier, Inc., Model BD–100–1A10 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time limits/maintenance checks; 32, Landing Gear.

(e) Reason

This AD was prompted by an in-service event that occurred where the nose gear door amber caution message displayed on the crew alerting system during the initial climb after gear retraction. The FAA is issuing this AD to address cracked fillet radii of the nose landing gear (NLG) door hinge fittings. The unsafe condition, if not addressed, could result in a NLG door misalignment, which could increase the drag and yawing movement during flight, could cause jamming of the door affecting the ability to extend or retract the NLG, or could potentially result in the NLG door detaching from the airplane.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 60 days after the effective date of this AD, revise the existing maintenance and inspection program, as applicable, to incorporate the information specified in Bombardier Challenger 300 BD–100 Time Limits/Maintenance Checks Temporary Revision (TR) TR5–2–101, dated June 30, 2022; or (Bombardier) Challenger 350 BD–100 Time Limits/Maintenance Checks TR TR5–2–30, dated June 30, 2022; as applicable. The initial compliance time for doing the tasks is at the time specified in Bombardier Challenger 300 BD–100 Time Limits/Maintenance Checks Temporary Revision (TR) TR5–2–101, dated June 30, 2022; or (Bombardier) Challenger 350 BD–100 Time Limits/Maintenance Checks TR TR5–2–30, dated June 30, 2022; as applicable, or within 60 days after the effective date of this AD, whichever occurs later.

(h) No Alternative Actions or Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals, may be used unless the actions and intervals, are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (i)(1) of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada; or Bombardier, Inc.'s Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Additional Information

(1) Refer to Transport Canada AD CF–2022–57, dated October 5, 2022, for related information. This Transport Canada may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–0935.

(2) For more information about this AD, contact Gabriel D. Kim, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Bombardier Challenger 300 BD–100 Time Limits/Maintenance Checks Temporary Revision (TR) TR5–2–101, dated June 30, 2022.

(ii) (Bombardier) Challenger 350 BD–100 Time Limits/Maintenance Checks Temporary Revision TR5–2–30, dated June 30, 2022.

(3) For service information identified in this AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* website *bombardier.com.*

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

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

Issued on April 18, 2023.

Christina Underwood,

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

[FR Doc. 2023–08574 Filed 4–24–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0190; Project Identifier 2019–CE–048–AD]

RIN 2120–AA64

Airworthiness Directives; Viking Air Limited (Type Certificate Previously Held by Bombardier Inc. and de Havilland Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: The FAA is revising a notice of proposed rulemaking (NPRM) that would have superseded Airworthiness Directive (AD) 64–09–03, which applies to all de Havilland (type certificate now held by Viking Air Limited) Model DHC–2 ''Beaver'' airplanes. This action revises the NPRM by changing the required action specified in the proposed AD. Additionally, the FAA is publishing an Initial Regulatory Flexibility Analysis (IRFA) to aid the public in commenting on the potential impacts to small entities from this proposal. The FAA is reopening the comment period to allow the public the chance to comment on the revised proposed action and whether the revised proposed action would have a significant economic impact on a substantial number of small entities. The FAA is proposing this AD to address the unsafe condition on these products and the agency is requesting comments on this SNPRM.

DATES: The FAA must receive comments on this SNPRM by June 9, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–0190; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, this SNPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this SNPRM, contact Viking Air Limited Technical Support, 1959 De Havilland Way, Sidney, British Columbia, Canada, V8L 5V5; phone: (800) 663–8444; fax: (250) 656–0673; email: *technical.support@vikingair.com;* website: *vikingair.com/support/service-bulletins.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: James Delisio, Continued Operational Safety Program Manager, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (516) 228–7321; email: *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal, including the IRFA. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0190; Project Identifier 2019–CE–048–AD'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may again revise this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this SNPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this SNPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this SNPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this SNPRM. Submissions containing CBI should be sent to James Delisio, Continued Operational Safety Program Manager, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued an NPRM (87 FR 7065, February 8, 2022; corrected February 18, 2022 (87 FR 9274)) that would apply to all Viking Air Limited (Viking) Model DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes. The NPRM proposed to supersede AD 64–09–03, Amendment 718 (29 FR 5390, April 22, 1964) (AD 64–09–03), which applies to all de Havilland (type certificate now held by Viking) Model

DHC–2 ''Beaver'' airplanes. AD 64–09–03 requires inspecting the aileron mass balance weight arms for cracks and corrosion and replacing any damaged part. AD 64–09–03 resulted from cracks and corrosion found on aileron mass balance weight arm part numbers (P/Ns) C2WA151, C2WA152, C2WA127, and C2WA128.

The NPRM proposed to require establishing a corrosion prevention and control program to identify and correct corrosion. In the NPRM, the FAA also proposed to require completing all of the initial tasks identified in the program and reporting corrosion findings to Viking. The NPRM was prompted by AD CF–2019–25, dated July 5, 2019, issued by Transport Canada, which is the airworthiness authority for Canada (referred to after this as ''the MCAI''). The MCAI states that it supersedes prior Transport Canada ADs related to a supplementary inspection and corrosion control program for aging airplanes, which identifies specific locations of an airplane that must be inspected to ensure corrosion-related degradation does not result in an unsafe condition. The MCAI continues to require the tasks included in the initial issue of Viking, DHC–2 Beaver Supplemental Inspection and Corrosion Control Manual, PSM 1–2–5, dated June 21, 2017, and requires additional inspections for components of airframe systems other than flight controls, which are included in Viking DHC–2 Beaver Supplemental Inspection and Corrosion Control Manual, PSM 1–2–5, Revision 1, dated January 10, 2019 (Viking PSM 1–2–5, Revision 1). Corrosion-related degradation, if not addressed, could lead to structural failure with consequent loss of control of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–0190.

Actions Since the NPRM Was Issued

Since the FAA issued the NPRM, the FAA revised the proposed actions specified in the NPRM. In the NPRM, the FAA proposed to require establishing a corrosion prevention and control program approved by the FAA. In this SNPRM the FAA proposes to require incorporating into the existing maintenance records for your airplane the actions specified in Parts 2 and 3 of Viking PSM 1–2–5, Revision 1.

In addition, the FAA is reopening the comment period to allow the public the chance to comment on whether the proposed AD would have a significant economic impact on a substantial number of small entities. The FAA is proposing this AD to address the unsafe condition on these products.

Comments

The FAA received comments from 23 commenters. The commenters were the Alaska Air Carriers Association, Alaska Air Transporters, Alaska Aircraft Sales and Maintenance, Alaska Seaplanes, Athens Insurance, Beluga Air, LLC, Enchanted Lake Lodge, Mountain Flying Service, Regal Air, Tailwind Aviation Inc., Taquan Air, Trail Ridge Air Inc., Ward Air, Inc., and several individuals.

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

Request To Withdraw NPRM: Current Regulations Are Adequate

Alaska Air Carriers Association, Beluga Air, LLC, Trail Ridge Air, Regal Air, Ward Air, Inc., and individual commenters stated that the NPRM is not needed due to existing requirements for annual and 100-hour inspections in the Federal Aviation Regulations.

The FAA does not agree that current regulations require the same inspections as those proposed in the NPRM. The FAA acknowledges that some of the tasks are in locations of the airplane where 100-hour or annual inspections require other inspections, but the inspections proposed in this SNPRM are focused on certain areas of the airplane and more detailed than those covered in the required annual or 100-hour inspections. The inspections specified in this SNPRM are part of a supplemental inspection and corrosion prevention program that is included in Parts 2 and 3 of Viking PSM 1–2–5, Revision 1. These inspection types and intervals address locations or parts that are not currently required to be inspected as part of annual or 100-hour inspections in existing regulations. These new inspections and intervals are needed to detect and address corrosion, which could lead to structural failure with consequent loss of control of the airplane. The FAA has not changed this SNPRM regarding this issue.

Request To Withdraw NPRM: Impact on Small Entities

Alaska Air Carriers Association, Alaska Seaplanes, Beluga Air, LLC, Regal Air, Trail Ridge Air, Ward Air, Inc., and individual commenters questioned the statement in the Regulatory Findings section of the NPRM that the NPRM ''[w]ould not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.'' Alaska Air Carriers Association, Alaska Seaplanes, Beluga Air, LLC, Mountain Flying Services, Regal Air, and Trail Ridge Air, noted that Alaska tourism, fishing, hunting, and other businesses would face an adverse economic impact. Some of these commenters noted that the costs of the proposed requirements could put some small or medium-sized businesses out of business. Alaska Air Carriers Association, Alaska Seaplanes, Beluga Air, LLC, and several individual commenters suggested that the NPRM would waste resources or add an undue burden for the small companies that operate these airplanes.

The FAA acknowledges the commenters' concerns and infers that the commenters are requesting that the NPRM be withdrawn due to the perceived adverse economic impact on small entities. Under 14 CFR 39.1, issuance of an AD is based on the finding that an unsafe condition exists or is likely to develop in aircraft of a particular type design. An aging airplane requires more attention during maintenance procedures and, at times, more frequent inspections of structural components to detect damage due to environmental deterioration, accidental damage, and fatigue. The unsafe condition addressed in this SNPRM includes undetected corrosion, which could lead to structural failure and consequent loss of control of the airplane. Inspections and repair are therefore necessary to detect and correct such corrosion before it leads to structural failure. The FAA has not changed this SNPRM regarding this issue.

Regarding the question of the NPRM having a significant economic impact on a substantial number of small entities, the FAA has developed an IRFA for this proposed action and a reason for issuing this SNPRM is to solicit comments on the IRFA.

Request To Withdraw NPRM: Lack of Data on Corrosion-Related Accidents

Alaska Aircraft Sales and Maintenance and an individual commenter asked how many accidents could be traced back to corrosion on these airplanes. One individual commenter added that in over 25 years of performing maintenance, the commenter had not seen any Model DHC–2 airplanes show an unusual tendency for corrosion or excessive stress and added that, on average, there is less corrosion on a Model DHC–2 airplane than is typical of airplanes more than 10 years old. A different individual commenter noted that in 37 years of experience, the commenter was unaware of the affected airplanes having

accidents or incidents due to corrosion. That individual commenter added that these airplanes are painted before assembly with corrosion-preventing primer and are probably less prone to corrosion than airplanes of the same age that are painted on the outside after assembly. Taquan Air stated that it is unaware of accidents or failures associated with corrosion on the affected airplanes. The FAA infers that the commenters are requesting that the FAA withdraw the NPRM.

The FAA does not agree with the commenters' requests to withdraw the NPRM. According to 14 CFR 39.5, the issuance of an AD is based on the finding that an unsafe condition exists or is likely to exist or develop in other products of the same type design. This section of the Federal Aviation Regulations does not specify that an accident is necessary for the FAA to determine that there is an unsafe condition. In this case, the FAA independently reviewed the MCAI and related service information and determined an unsafe condition exists and an AD is needed to address that unsafe condition. Further, it is within the FAA's authority and responsibility to issue ADs to require actions to address unsafe conditions that are not otherwise being addressed (or are not addressed adequately) by routine maintenance procedures. In addition, based upon detailed airplane tear-down inspections performed by Viking (the design approval holder), the FAA has determined that the existing maintenance procedures and inspections will not adequately detect corrosion. Although this SNPRM is not tied to a specific corrosion related accident, the FAA has determined that such undetected corrosion could lead to structural failure. The FAA has a responsibility to issue ADs to correct identified unsafe conditions in aircraft, regardless of the location or cause. The FAA has not changed this SNPRM regarding this issue.

Request To Withdraw NPRM: No Obligation To Adopt the Proposed AD

Alaska Air Carriers Association, Alaska Seaplanes, Beluga Air LLC, Regal Air, Trail Ridge Air, and individual commenters requested that the FAA withdraw the NPRM, explaining the FAA has no obligation to enact the NPRM simply because Transport Canada enacted an AD. Some of these commenters claimed that finalizing the NPRM to a final rule would contradict the FAA's requirement to ''encourage and develop civil aeronautics'' by imposing substantial costs and efforts to comply with that final rule.

The FAA disagrees with withdrawing the NPRM. Although the FAA acknowledges that it has no obligation to adopt an AD to parallel the requirements in the Transport Canada AD, the FAA has a responsibility to issue ADs to require actions to address unsafe conditions that are not otherwise being addressed. As previously stated, the FAA independently reviewed the MCAI and related service information and determined an unsafe condition exists and an AD is needed to address that unsafe condition. The FAA may address such unsafe conditions by requiring revisions to maintenance records as a condition under which airplanes may continue to be operated. Part of the FAA's obligation to ''encourage and develop civil aeronautics'' is to take any necessary action to keep the existing aircraft fleet safe, which includes the issuance of ADs. The FAA has not changed this SNPRM regarding this issue.

Request To Acknowledge Impacts on Intrastate Aviation in Alaska

Alaska Air Carriers Association, Alaska Seaplanes, Beluga Air LLC, and individual commenters requested that the FAA revise the NPRM to acknowledge that intrastate aviation in Alaska would be affected. Alaska Seaplanes asserted that 13 local Alaska businesses stated that the proposed AD would put them out of business; the commenter added that these businesses are the lifeline to small and rural communities not accessible by other aircraft.

The FAA acknowledges the commenters' concerns. In light of the heavy reliance on aviation for intrastate transportation in Alaska, the FAA has fully considered the effects of this SNPRM (including costs to be borne by affected operators) from the earliest possible stages of AD development. The NPRM was based on those considerations, and was developed with regard to minimizing the economic impact on operators to the extent possible, consistent with the safety objectives of this SNPRM. In any event, the Federal Aviation Regulations (14 CFR part 39) require operators to correct an unsafe condition identified on an airplane to ensure operation of that airplane in an airworthy condition. The FAA has determined that the need to correct the unsafe conditions outweighs any impact on aviation in Alaska. The FAA has not changed this SNPRM regarding this issue.

In addition, regarding the costs of this SNPRM, the FAA has developed an IRFA for this proposed action and a reason for issuing this SNPRM is to solicit comments on the IRFA.

Request To Supersede All Corrosion ADs for the Affected Models

Alaska Air Carriers Association, Beluga Air LLC, Mountail Flying Services, Regal Air, Ward Air, Inc., and individual commenters requested that the NPRM be revised to supersede all ADs related to corrosion prevention and maintenance for the affected airplanes, not just AD 64–09–03. An individual noted that the NPRM conflicts with more than just AD 64–09–03 and added that AD 2008–11–11, Amendment 39–15533 (73 FR 34611, June 18, 2008) (AD 2008–11–11) specifies a penetrant inspection for cracks in the front spar center section web of the tailplane, while task C55–10–02 in Viking PSM 1–2–5, Revision 1, allows using a penetrant or an eddy current inspection, which seems contradictory.

The FAA disagrees with the commenters' requests to supersede all corrosion-related ADs for the affected airplanes. The FAA has reviewed all potentially related ADs against the proposed requirements in this SNPRM and determined that no other ADs need to be superseded or rescinded. Any other ADs involving inspecting for corrosion on the affected airplanes require either inspecting different parts or locations on an airplane or the inspections are not as in-depth or repetitive; therefore they do not overlap with the proposed inspections. This includes AD 2008–11–11, which requires inspecting a different part than that in task C55–10–02 of Viking PSM 1–2–5, Revision 1. The FAA has not changed this SNPRM regarding this issue.

Request To Add Airplanes to Aging Aircraft or Other Existing Rulemaking

Taquan Air and an individual commenter requested that the unsafe condition be addressed by adding these airplanes to the Aging Aircraft rule (14 CFR 135.422), rather than through the NPRM. The commenters noted that doing so would evenly spread the burden, rather than having different corrosion control policies for different airplane models. Taquan Air noted that Alaska has been exempted from the Aging Aircraft rule. Both commenters suggested that 14 CFR part 43 appendix D (which specifies the scope and detail of items to be included in annual and 100-hour inspections) be rewritten to address corrosion. The individual commenter added that 14 CFR 135.422 should apply to all part 135 operators, with a similar 14 CFR regulation applicable to part 91 operators.

The FAA disagrees with adding this to the Aging Aircraft rule. The proposed action would address a known unsafe condition on the structure of Viking Model DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes. If the FAA finds that other aircraft have similar issues to the affected airplanes, the FAA would look at appropriate rulemaking for those aircraft also. For the Viking Model DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes, as stated previously, the FAA has determined that annual and 100-hour inspections are currently not adequate to address the unsafe condition identified in this SNPRM. The FAA has a responsibility to address an unsafe condition that is not addressed by general maintenance by issuing an AD. Therefore, the proposed actions of this SNPRM are the appropriate way of addressing the unsafe condition. Adding inspections for corrosion to 14 CFR part 43 appendix D to address the unsafe condition identified in this SNPRM is not appropriate because that corrective action would not be limited to the products affected by this unsafe condition. 14 CFR part 43 appendix D contains general inspections that are not specific to individual products. Therefore, issuing an AD is the appropriate vehicle for addressing this identified unsafe condition. The FAA has not changed this SNPRM regarding this issue.

Request To Revise the Number of Affected Airplanes

Alaska Air Transporters, Alaska Seaplanes, Athens Insurance, Enchanted Lake Lodge, Tailwind Aviation, and individual commenters requested that the Costs of Compliance section in the NPRM be revised to reflect that more than 135 airplanes of U.S. registry would be affected. Several of these commenters suggested that 382 airplanes of U.S. registry would be affected, while one individual commenter stated that there are ''more like 400 airplanes involved.'' A second individual commenter noted that many of these airplanes have been erroneously registered as Model L–20A airplanes due to incorrect procedures when the airplanes were imported or converted from military to civilian use.

The FAA agrees with the commenters' request to revise the number of affected airplanes of U.S. registry. The FAA has re-evaluated the data and determined that 409 airplanes of U.S. registry is a better estimate. The FAA notes that there are no airplanes on the U.S. registry listed as Model L–20A airplanes. The FAA has revised the Costs of Compliance section of this SNPRM accordingly.

Request To Revise Costs of Compliance: Labor Rate

Alaska Air Transporters, Athens Insurance, Enchanted Lake Lodge, Tailwind Aviation, and several individual commenters requested that the FAA revise the labor rate in the Costs of Compliance section of the NPRM. The commenters noted that current labor rates are anywhere from $110 to $150 per hour. Several of these commenters added that the proposed costs do not consider airplane downtime or the current shortage of qualified mechanics able to do the inspections.

Additionally, Alaska Seaplanes asserted that three operators have complied with the service information referenced in the NPRM and the cost of compliance was $65,000 to $125,000, not the $29,070 per airplane estimated in the NPRM.

The FAA disagrees with the commenters' requests to revise the labor rate in the Costs of Compliance section of this SNPRM. The FAA notes that the labor rate of $85 per hour is provided by the FAA Office of Aviation Policy and Plans for the FAA to use when estimating the labor costs of complying with AD requirements. Regarding the comments on down-time and labor shortages, the FAA acknowledges the commenters' concerns. The FAA recognizes that in accomplishing the requirements of any AD, operators might incur ''indirect'' costs in addition to the ''direct'' costs that are reflected in the cost analysis presented in the AD. However, the cost analysis in ADs typically does not include indirect costs since the FAA does not have sufficient information to evaluate these costs including additional down-time and loss of revenue. The FAA has not changed this SNPRM regarding this issue.

Request To Revise Requirements Based on Airplane Usage Conditions

Alaska Aircraft Sales and Maintenance, Alaska Air Transporters, Athens Insurance, Enchanted Lake Lodge, Mountain Flying Service, Tailwind Aviation, Taquan Air, and several individuals requested that the NPRM be revised to have different requirements based on how the airplane is used. Alaska Aircraft Sales and Maintenance suggested that the NPRM penalized operators by applying one program to all operating environments. Several of these commenters noted that airplanes used on wheels or only in freshwater would have less exposure to factors causing corrosion than airplanes operated in saltwater and suggested the requirements should be revised accordingly. Mountain Flying Services noted that its airplane is kept in a heated hanger when not in use, has been rebuilt, and has had minimal time in water, which makes it less susceptible to corrosion. An individual commenter suggested the NPRM should allow both specificity and flexibility based on atmospheric conditions, saltwater exposure, and time on floats.

The FAA disagrees with the commenters' requests to change the NPRM based on different airplane operational usage. There is no current requirement to track the hours spent flying in different conditions or types of water. Additionally, operators may not know the entire flight history of an airplane. Without this detailed knowledge of each airplane, it would be impossible for the FAA to develop a special set of inspections based on airplane usage conditions. However, operators may submit a proposal for revised requirements by requesting an alternative method of compliance (AMOC) using the procedures specified in paragraph (i) of this SNPRM. The FAA has not changed this SNPRM regarding this issue.

Request To Clarify Process for Creating Corrosion Prevention and Control Program

Alaska Air Carriers Association, Alaska Aircraft Sales and Maintenance, Regal Air, Taquan Air, Trail Ridge Air Inc., and several individual commenters asked for clarity regarding the process of creating and getting approval for a corrosion prevention and control program. Alaska Aircraft Sales and Maintenance asked what the guidance will be for an operator who chooses to write its own program versus getting an AMOC. Alaska Aircraft Sales and Maintenance asked if any maintenance inspector could approve the program or if it would have to go to the aircraft certification office (ACO), and further questioned how the operator would comply in a timely manner if ACO approval is delayed. One individual commenter noted that the proposed AD does not include a specific definition of what the program would require, only that it should line up with an undated revision of a Viking maintenance manual. That same individual commenter added that the affected airplanes are already maintained following maintenance instructions and recommended practices (and compliance times when scheduling permits) in Viking Service Bulletin V2/0011, Revision NC, dated November 28,

2019 (Viking Service Bulletin V2/0011, Revision NC), which is related to the Viking maintenance manual, so operators should not be held to a higher level of accountability. A second individual commenter noted that it appears the NPRM would give Viking PSM 1–2–5, Revision 1, the same authority and weight as an airworthiness limitation, or operators could write their own program and get it approved by the FAA. That same individual commenter questioned what would happen when Viking PSM 1–2–5, Revision 1, is revised and contradicts the AD requirements. A third individual commenter suggested it is unfair for the FAA to require operators to develop a program without the proper qualifications, experience, or training. That same individual commenter suggested that the lack of guidance and procedures would leave room for interpretation, leading to multiple exhanges with the FAA and an ever-evolving process that could lead to significant delays and could ground airplanes. A fourth individual commenter added that trying to design a manual to be approved by several different parties could lead to confusion for both the operator submitting the manual and the FAA, and suggested targeting the area of concern and inspections based on existing Advisory Circular (AC) 43–4B, *Corrosion Control for Aircraft,* dated September 11, 2018. Taquan Air asked how long it would take to get a program approved. Taquan Air also asked if the Viking corrosion control program is an approved method for establishing a corrosion prevention and control program. Taquan Air suggested that the FAA establish areas that need to be in the program and an outline of expectations, so operators can get it correct.

The FAA acknowledges the commenters' concerns regarding the creation of a corrosion prevention and control program. To make compliance easier for operators and eliminate the need to create an FAA-approved corrosion prevention and control program, the FAA simplified the proposed actions. This SNPRM would require incorporating the inspections in Parts 2 and 3 of Viking PSM 1–2–5, Revision 1, into the existing maintenance records. In Note 1 to paragraph (g) of the NPRM, the use of Viking PSM 1–2–5, Revision 1, was identified as an acceptable means of compliance but was not required to be used. That note has been removed from this SNPRM and the subsequent note that appeared as Note 2 to paragraph (g) has been has re-identified as Note 1 to paragraph (g) in this proposed AD.

The FAA acknowledges that Viking Service Bulletin V2/0011, Revision NC, is related to this SNPRM because it lists the inspection tasks and descriptions that are specified in Viking PSM 1–2–5, Revision 1, and specifies to accomplish those tasks following the procedures in Viking PSM 1–2–5, Revision 1. Note 1 to paragraph (g) in this proposed AD refers to Viking Service Bulletin V2/0011, Revision NC, as an additional source of information.

If Transport Canada or the FAA determines that any revised tasks in a future Viking PSM are necessary to address an unsafe condition, the FAA will consider future rulemaking to require operators to accomplish those tasks. The FAA also acknowledges the commenters' concerns regarding delays and timeliness of approving a corrosion prevention and control program, however, since this proposed AD would require operators to incorporate the inspections in Parts 2 and 3 of Viking PSM 1–2–5, Revision 1, into the existing maintenance records, those concerns should be mitigated.

Request To Remove or Revise Certain Inspection Requirements

An individual commenter stated that Viking PSM 1–2–5, Revision 1, is duplicative of Viking PSM 1–2–2, DHC 2 Beaver Maintenance Manual, Revision 4, dated March 28, 2018 (Viking PSM 1–2–2, Revision 4), and provided a summary of inspections that are already included in Viking PSM 1–2–2, Revision 4, and other service information. The commenter added that the new inspections in Viking PSM 1–2–5, Revision 1, are non-destuctive testing (NDT) inspections that in Canada are issued with a pass/fall certificate. The commenter added that the pass/fail documentation does not contain any actual measured results, therefore the statistical predictive modeling for time to failure (which would allow operators to plan replacement/overhaul activities) cannot be accomplished. The commenter provided several suggestions including: Viking be required to supply measured results and predictive indicators to operators; duplicate inspection points related to Viking PSM 1–2–2, Revision 4, be removed from the NPRM; a recommended order of operations for the inspections be provided so they are streamlined; and that ADs be combined for simplification of maintenance.

The FAA acknowledges the commenter's concerns about potential duplication between Viking PSM 1–2–2, Revision 4, and Viking PSM 1–2–5, Revision 1. However, the inspections in these two documents are designed to complement each other. Viking PSM 1–2–5, Revision 1, refers to Viking PSM 1–2–2, Revision 4, and other documents. The recommended supplemental inspection and control program in Viking PSM 1–2–5, Revision 1, does not replace any aspect of the current inspection program that is described in Viking PSM 1–2–2, Revision 4, or other referenced documents. The FAA further notes that the FAA cannot use an AD to require Viking to supply results, indicators, or other information to operators, although individual operators could request that information from Viking. The FAA has not changed this SNPRM regarding this issue.

Request To Allow Phase-in of Inspections

Alaska Air Transporters, Alaska Aircraft Sales and Maintenance, Athens Insurance, Enchanted Lake Lodge, Mountain Flying Services, Tailwind Aviation, and two individual commenters requested that the NPRM be revised to allow a phase-in period for the proposed new requirements. Several of these commenters noted that fully implementing the Viking PSM 1–2–5, Revision 1, and inspections in one year would double or triple their budgeted maintenance costs. Several of these commenters suggested allowing a 5-year incremental implementation of the manual, with different inspections required each year. One individual commenter noted that the airplane fleet is not that large, and flexibility could be afforded, which would allow operators to use multiple seasons of revenue to fund the inspections. Alaska Aircraft Sales and Maintenance noted that the 8-month deadline for initial inspections is too restrictive and should be phased-in, similar to Viking PSM 1–2–5, Revision 1, or aligned to be performed at the same time as other required service actions. Alaska Aircraft Sales and Maintenance added that operators should be provided credit for the initial inspection if they have already done a given task.

The FAA partially agrees with the commenters' requests to extend the compliance times. Paragraph (g) of this proposed AD would require incorporating the inspections in Parts 2 and 3 of Viking PSM 1–2–5, Revision 1, into the existing maintenance records and doing each initial task within 6 months after the effective date of the final rule or at the threshold for each applicable task specified in Part 3 of Viking Product Support Manual PSM 1–2–5, Revision 1, whichever occurs later.

The FAA disagrees with increasing the compliance time up to 5 years.

Regarding Alaska Aircraft Sales and Maintenance's request for credit, the FAA agrees to provide clarification. Paragraph (f) of this proposed AD states to accomplish the required actions within the compliance times specified, ''unless already done.'' Therefore, if operators have accomplished the actions required for compliance specified in this SNPRM before the effective date of the final rule, no further action is necessary, unless the task is a repetitive action and then it would be required at the repetitive interval. The FAA has not revised this SNPRM in this regard.

Request To Allow Mechanics To Perform Certain Tasks

An individual requested that ''properly trained mechanics'' be allowed to perform the NDT inspections (tasks). Ward Air requested that an ''in-house trained aircraft technician'' using ''modern technology'' be allowed to do the required ultrasonic testing rather than requiring an operator to hire an outside Level II trained technician to perform the testing.

The FAA partially agrees with the commenters' requests. Operators can use an in-house properly trained individual with qualifications equivalent to Level II or Level III to do the NDT inspections. FAA Advisory Circular 65–31B, *Training, Qualification, and Certification of Nondestructive Inspection Personnel,* dated February 24, 2014, contains FAA-approved Level II and Level III qualification standards critieria for inspection personnel doing NDT inspections. The FAA does not agree that this SNPRM specifies a requirement to hire outside properly trained Level II NDT personnel. Viking PSM 1–2–5, Revision 1, specifies that personnel certified as Level II or higher, as acceptable to the operator's cognizant airworthiness authority, can do the NDT inspections. The FAA has not changed this SNPRM regarding this issue.

Request To Require Reporting to FAA Not Viking

An individual commenter requested that the NPRM be revised so that the results of any required reporting are sent to the FAA through the FAA's service difficulty reporting system, and not sent to a foreign company (Viking) that is not overseen by the FAA.

The FAA disagrees with the commenter's request. Transport Canada is the State of Design Authority and Viking is the type certificate holder for Model DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes. As such, they should be evaluating the reports to determine if any additional actions should be required to address the unsafe condition and through the appropriate bilateral airworthiness agreement will share such information with the FAA. For these reasons, the reports should be sent to Viking. The FAA has not changed this SNPRM regarding this issue.

Revised Estimated Costs of Compliance in This SNPRM

Based on the new requirement specified in paragraph (g) of this proposed AD to incorporate the inspections in Parts 2 and 3 of Viking PSM 1–2–5, Revision 1, into the existing maintenance records, the FAA has revised the estimated costs associated with paragraph (g) of this AD from 342 work-hours to 1 work-hour. The proposed requirements to establish a corrosion prevention program and the initial inspection tasks that were included in the NPRM were removed from this SNPRM.

FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI described above. The FAA is issuing this SNPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design. At the request of some commenters, the FAA is reopening the comment period of this SNPRM to allow the public the chance to comment on the economic impact on a substantial number of small entities. This SNPRM also contains the changes discussed previously.

Proposed AD Requirements in This SNPRM

This proposed AD would retain none of the requirements of AD 64–09–03. This proposed AD would require, within 90 days after the effective date of the final rule, incorporating into the existing maintenance records the actions specified in Parts 2 and 3 of Viking PSM 1–2–5, Revision 1, and doing each initial task within 6 months after the effective date of the proposed AD or at the threshold for each applicable task specified in Part 3 of Viking Product Support Manual PSM 1–2–5, Revision 1, whichever occurs later. This proposed AD would also require reporting corrosion findings to Viking. Because the inspection of the aileron balance weight arms required by AD 64–09–03 would be included in the revision of the existing maintenance records, this proposed AD would supersede AD 64–09–03.

ADs Mandating Airworthiness Limitations (ALS)

The FAA has previously mandated airworthiness limitations by issuing ADs that require revising the ALS of the existing maintenance manual or instructions for continued airworthiness to incorporate new or revised inspections. This proposed AD, however, would require establishing and incorporating new inspections into the existing maintenance records required by 14 CFR 91.417(a)(2) or 135.439(a)(2) for your airplane. The FAA does not intend this as a substantive change. Requiring incorporation of the new ALS requirements into the existing maintenance records, rather than requiring individual repetitive inspections and replacements, allows operators to record AD compliance once after updating the existing maintenance records, rather than recording compliance after every inspection and part replacement.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Viking PSM 1–2–5, Revision 1, which specifies procedures for inspecting locations of the airplane that are particularly susceptible to corrosion-related degradation and includes repetitive inspection intervals, defines the different levels of corrosion, and provides corrective action if corrosion is found.

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

Other Related Service Information

The FAA reviewed Viking Service Bulletin V2/0011, Revision NC. This service information provides a list of new inspection tasks that have been added to the DHC–2 supplementary inspection and corrosion control program, Viking PSM–1–2–5, Revision 1.

Impact on Intrastate Aviation in Alaska

In light of the heavy reliance on aviation for intrastate transportation in Alaska, the FAA has fully considered the effects of this SNPRM (including costs to be borne by affected operators) from the earliest possible stages of AD development. As previously stated, 14

CFR part 39 requires operators to correct an unsafe condition identified on an airplane to ensure operation of that airplane in an airworthy condition. The FAA has determined that the need to correct corrosion-related degradation in aging aircraft, which could lead to structural failure with consequent loss of control of the airplane, outweighs any impact on aviation in Alaska.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 409 airplanes of U.S. registry. The FAA also estimates that it would take about 1 work-hour per airplane at a labor rate of $85 per work-hour to revise the existing maintenance records.

Based on these figures, the FAA estimates the cost of this proposed AD on U.S. operators to be $34,765 or $85 per airplane.

The FAA estimates it would take about 1 work-hour to report any Level 2 corrosion found during the proposed initial or subsequent inspections or any Level 3 corrosion found during the proposed initial or subsequent inspections, for an estimated cost of $85 per airplane.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour 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. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980, Public Law 96–354, 94 Stat. 1164 (5 U.S.C. 601–612) (RFA) establishes as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.

To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. Based on the comments received following publication of the NPRM, the FAA has completed an IRFA and requests comments from affected small entities. The purpose of this analysis is to identify the number of small entities affected, assess the economic impact of the proposed regulation on them, and consider less burdensome alternatives and still meet the agency's statutory objectives.

Initial Regulatory Flexibility Act Analysis

The RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857, Mar. 29, 1996) and the Small Business Jobs Act of 2010 (Pub. L. 111–240, 124 Stat. 2504, Sept. 27, 2010), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and small organizations that are independently owned and operated and are not dominant in their fields, and small governmental jurisdictions with populations of less than fifty thousand (50,000).

The FAA is publishing this IRFA to aid the public in commenting on the potential impacts to small entities from this proposal. The FAA invites interested parties to submit data and information regarding the potential economic impact that would result from the proposal. The FAA will consider comments when making a determination or when completing a Final Regulatory Flexibility Assessment.

Under Sections 603(b) and (c) of the RFA, the initial regulatory flexibility analysis for a proposed rule must contain the following:

(1) A description of the reasons why the action by the agency is being considered;

(2) A succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(5) An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule; and

(6) A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

1. Reasons the Action Is Being Considered

The NPRM proposed to supersede AD 64–09–03, which applies to all de Havilland (type certificate now held by Viking) Model DHC–2 ''Beaver'' airplanes, because after the FAA issued AD 64–09–03 Transport Canada superseded its MCAI to identify specific locations of an airplane that must be inspected to ensure corrosion-related degradation does not result in an unsafe condition. The NPRM proposed to

require establishing a corrosion prevention and control program to identify and correct corrosion, completing all of the initial tasks identified in the program, and reporting corrosion findings to Viking. The proposed corrosion prevention and control program would incude the inspection of the aileron balance weight arms required by AD 64–09–03.

2. Objectives and Legal Basis of the Proposed Rule

The objective of the actions proposed in this SNPRM is to meet the same safety intent as those actions proposed in the NPRM. The FAA issued the NPRM under the authority described in Title 49, Subtitle VII, Part A, Subpart III, Section 44701, General requirements. Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing minimum safety standards required in the interest of safety. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on Viking Model DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes.

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

3. All Federal Rules That May Duplicate, Overlap, or Conflict

There are no relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

4. Description and Estimate of the Number of Small Entities

The FAA used the definition of small entities in the RFA for this analysis. The RFA defines small entities as small businesses, small governmental jurisdictions, or small organizations. In 5 U.S.C. 601(3), the RFA defines ''small business'' to have the same meaning as ''small business concern'' under section 3 of the Small Business Act. The Small Business Act authorizes the Small Business Administration (SBA) to define ''small business'' by issuing regulations.

SBA (2022) has established size standards for various types of economic activities, or industries, under the North American Industry Classification System (NAICS).[1] These size standards generally define small businesses based on the number of employees or annual receipts.

The FAA Civil Aircraft Registry shows 409 Model DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes that would be affected by this SNPRM. These 409 airplanes are registered to 235 private businesses, 76 individuals, and 3 government agencies. The 76 individuals and 3 government agencies are excluded from this analysis as the RFA does not apply to individuals and the 3 government agencies are not small entities as defined by the RFA.[2]

Three hundred nineteen (319) airplanes are owned and operated by 235 private entities. A sample of 50 private businesses was randomly selected for the analysis.[3] Of the 50 sampled entities, 45 were found to be small. The results of the cost impact analysis for these 45 small entities is shown in Table 1 and will be discussed in the following section.

TABLE 1—COST IMPACT ON SMALL ENTITIES

Operator	FAA registry type	DHC–2 A/C	Revenues ($1,000)	Cost	Cost/ revenue (%)	NAICS code	Size standard	NAICS industry
ALASKAS FISHING UNLIMITED INC.	Non-Citizen Corp	1	79	$170.0	0.2	721214	$8 mn	Recreational and Vacation Camps (except Campgrounds).
DOUGLAS AVIATION LTD	Corporation	2	90	340.0	0.4	541990	$17 mn	All Other Professional, Scientific and Technical Services.
NORTHSTAR HOLDINGS LLC	LLC	3	110	510.0	0.5	551112	$40 mn	Offices of Other Holding Companies.
RHK OF KANSAS	Corporation	1	110	170.0	0.2	541110	$13.5 mn	Offices of Lawyers.
SUMMIT LEASING LLC	LLC	1	110	170.0	0.2	532490	$35 mn	Other Comm'l & Ind. Machinery and Equip. Rental & Leasing.
JESPERSEN AIRCRAFT SERVICES INC.	Corporation	3	113	510.0	0.4	481219	$22 mn	Other Nonscheduled Air Transportation.
KATMAI AIR LLC	LLC	1	117	170.0	0.1	532411	$40 mn	Comm'l Air, Rail, & Water Transp. Equip. Rental and Leasing.
MUSTANG HIGH FLIGHT LLC	LLC	1	127	170.0	0.1	334511	1,250 emp	Search, Detect., Nav., Guid., Aero., & Naut. Systems & Inst. Mfg.
FLIGHT MANAGEMENT LLC	LLC	2	161	340.0	0.2	561110	$11 mn	Office Administrative Services.
NEWHALEN LODGE INC	Corporation	3	165	510.0	0.3	721199	$8 mn	All Other Traveler Accommodation.
4R AVIATION LLC	LLC	1	177	170.0	0.1	336411	1,500 emp	Aircraft Manufacturing.
RAINBOW KING LODGE INC	Corporation	2	209	340.0	0.2	721199	$8 mn	All Other Traveler Accommodation.
DOYON AIRCRAFT LEASING LLC.	LLC	1	250	170.0	0.1	532411	$40 mn	Comm'l Air, Rail, & Water Transp. Equip. Rental and Leasing.
KENMORE CREW LEASING INC TRUSTEE.	Corporation	1	278	170.0	0.1	532490	$35 mn	Other Comm'l & Ind. Machinery and Equip. Rental & Leasing.
COMANCHE FIGHTERS LLC	LLC	1	301	170.0	0.1	813930	$14.5 mn	Labor Unions and Similar Labor Organizations.

[1] Small Business Administration (SBA). 2022. Table of Size Standards. Effective July 14, 2022. *https://www.sba.gov/document/support-table-size-standards.*

[2] Two airplanes are registered to the U.S. Department of the Interior. Five airplanes are registered to the United States Forest Service, within the U.S. Department of Agriculture. Two airplanes are registered to the State of Alaska to the Alaska Department of Fish & Game. These government agencies and are not small entities under the RFA.

[3] The sample was selected by shuffling the order of the list of 409 DHC–2 airplanes in the FAA Registry and going down the randomized list. If revenue and employee count data were available, it was included in the sample; otherwise, it was excluded. This process was repeated until 50 entities, for which revenue and employee data were available, had been added to the sample. The shuffling was accomplished by giving each entry in the registry an index value between 0 and 1 using Excel's RAND function. The entries were then sorted by that index value to randomize their order.

TABLE 1—COST IMPACT ON SMALL ENTITIES—Continued

Operator	FAA registry type	DHC–2 A/C	Revenues ($1,000)	Cost	Cost/ revenue (%)	NAICS code	Size standard	NAICS industry
BAY AIR INC	Corporation	1	307	170.0	0.1	481111	1,500 emp	Scheduled Passenger Air Transportation.
COYOTE AIR LLC	LLC	2	310	$340.0	0.1	481211	1,500 emp	Nonscheduled Chartered Passenger Air Transp.
KINGFISHER AIR INC	Corporation	1	366	170.0	0.0	481219	$22 mn	Other Nonscheduled Air Transportation.
ASSOCIATED LEASING LLC	LLC	1	500	170.0	0.0	532490	$35 mn	Other Comm'l & Ind. Machinery and Equip. Rental & Leasing.
TIKCHIK NARROWS LODGE INC.	Corporation	3	720	510.0	0.1	721214	$8 mn	Recreational and Vacation Camps (except Campgrounds).
NORTHWEST SEAPLANES INC	Corporation	3	750	510.0	0.1	481111	1,500 emp	Scheduled Passenger Air Transportation.
SNOW MOUNTAIN ENTERPRISES LLC.	LLC	1	750	170.0	0.0	532000	$8 mn	Rental and Leasing Services, N.F.S.
ISLAND WINGS AIR SERVICE LLC.	LLC	2	956	340.0	0.0	481211	1,500 emp	Nonscheduled Chartered Passenger Air Transp.
TVPX AIRCRAFT SOLUTIONS INC TRUSTEE.	Corporation	3	1,157	510.0	0.0	336310	1,000 emp	Motor Vehicle Gasoline Engine and Engine Parts Mfg.
SHELDON AIR SERVICE LLC	LLC	1	1,400	170.0	0.0	481219	$22 mn	Other Nonscheduled Air Transportation.
TALKEETNA AIR TAXI INC	Corporation	1	1,635	170.0	0.0	481219	$22 mn	Other Nonscheduled Air Transportation.
NO SEE UM LODGE INC	Corporation	3	2,036	510.0	0.0	721214	$8 mn	Recreational and Vacation Camps (except Campgrounds).
WARD AIR INC	Corporation	4	2,191	680.0	0.0	481219	$22 mn	Other Nonscheduled Air Transportation.
HISTORIC FLIGHT FOUNDATION.	Corporation	1	2,500	340.0	0.0	712110	$30 mn	Museums.
LAKE HAVASU SEAPLANES LLC.	LLC	1	2,500	170.0	0.0	611000	$8 mn	Educational Services, N.F.S.
RDJ BROTHERS TRUCKING INC.	Corporation	1	2,500	170.0	0.0	236000	$39.5 mn	Construction of buildings, N.F.S.
SEAWIND AVIATION INC	Corporation	2	2,500	170.0	0.0	481211	1,500 emp	Nonscheduled Chartered Passenger Air Transp.
TIKCHIK AIRVENTURES LLC	LLC	1	2,500	170.0	0.0	481211	1,500 emp	Nonscheduled Chartered Passenger Air Transp.
WOLF TRAIL LODGE INC	Corporation	1	2,500	170.0	0.0	721000	$8 mn	Accommodation, N.F.S.
ANDREW AIRWAYS INC	Corporation	3	2,576	510.0	0.0	485999	$16.5 mn	All Other Transit and Ground Passenger Transportation.
ALASKAS ENCHANTED LAKE LODGE INC.	Corporation	2	2,729	340.0	0.0	721310	$12.5 mn	Rooming & Boarding Houses, Dormitories, and Workers' Camps.
RAINBOW RIVER LODGE LLC	LLC	2	4,000	340.0	0.0	721214	$8 mn	Recreational and Vacation Camps (except Campgrounds).
K BAY AIR LLC	LLC	1	4,427	170.0	0.0	481219	$22 mn	Other Nonscheduled Air Transportation.
RAPIDS CAMP LODGE INC	Corporation	1	7,000	170.0	0.0	713990	$8 mn	All Other Amusement and Recreation Industries.
PROGRESSIVE PLASTICS INC	Corporation	1	7,500	170.0	0.0	326199	750 emp	All Other Plastics Product Manufacturing.
BROWN HELICOPTER INC	Corporation	1	9,000	170.0	0.0	336412	1,500 emp	Aircraft Engine and Engine Parts Manufacturing.
PERRYCOOK FLIGHT SERVICES LLC.	LLC	1	12,500	170.0	0.0	481211	1,500 emp	Nonscheduled Chartered Passenger Air Transp.
KOMRO INTERNATIONAL LLC	LLC	1	14,100	170.0	0.0	423820	125 emp	Farm & Garden Machinery & Equip. Merchant Wholesalers.
CONCRETE WORKS OF COLORADO INC.	Corporation	1	16,190	170.0	0.0	238110	$16.5 mn	Poured Concrete Foundation and Structure Contractors.
KENMORE AIR HARBOR LLC	LLC	9	51,500	1,530.0	0.0	481111	1,500 emp	Scheduled Passenger Air Transportation.
Total		80	$161,997	13,600				
Mean			3,600	302	0.1			
Median			956	170	0.0			

Notes:
1. The size standard is the maximum size for the NAICS industry considered by the Small Business Administration to be a small entity.
2. AD costs per airplane are 1 work-hour × $85 = $85 + $85 reporting costs for initial inspection, for a total of $170.
3. All percentage figures are rounded to the nearest tenth of a percent. All 0.0% figures represent values below 0.1%, but above 0%.

5. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The FAA estimated that this AD, if adopted as proposed, would take about 1 work-hour per airplane at a labor rate of $85 per work-hour incorporate the inspections in Parts 2 and 3 of Viking PSM 1–2–5, Revision 1, into the existing maintenance records and comply with the initial inspection tasks of the program, plus $85 per airplane to report any corrosion found during the proposed initial inspections, for an estimated total cost of $170 per airplane.

The estimated cost of this proposed AD, per small entity, is shown in the ''Cost'' column of Table 1 and cost impact is measured by cost as a percentage of revenues. As the table

shows, the mean cost impact is 0.1% of annual revenues,[4] while the median cost impact of less than 0.1% shows no significant impact on any of the small entities. This impact did not vary with firm size; the largest cost impact was only 0.5%, which is still not considered significant. Therefore, the FAA finds that the proposed AD would not have a significant impact on a substantial number of small entities.

6. Significant Alternatives Considered

The FAA did not find any significant regulatory alternatives to the proposed AD that would still accomplish the safety objectives of this proposed AD.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

(2) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the RFA.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 64–09–03, Amendment 718 (29 FR 5390, April 22, 1964); and

■ b. Adding the following new airworthiness directive:

Viking Air Limited (Type Certificate Previously Held by Bombardier Inc. and de Havilland Inc.): Docket No. FAA–2022–0190; Project Identifier 2019–CE–048–AD.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by June 9, 2023.

(b) Affected ADs

This AD replaces AD 64–09–03, Amendment 718 (29 FR 5390, April 22, 1964).

(c) Applicability

This AD applies to Viking Air Limited (type certificate previously held by Bombardier Inc. and de Havilland, Inc.) Model DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2000, Airframe.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as corrosion-related degradation in aging aircraft. The FAA is issuing this AD to detect and address corrosion, which could lead to structural failure with consequent loss of control of the airplane.

(f) Compliance

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

(g) Required Actions

(1) Within 90 days after the effective date of this AD, incorporate into the existing maintenance records required by 14 CFR 91.417(a)(2) or 135.439(a)(2), as applicable for your airplane, the actions and associated thresholds and intervals, including life limits, specified in Parts 2 and 3 of Viking DHC–2 Beaver Supplemental Inspection and Corrosion Control Manual, PSM 1–2–5, Revision 1, dated January 10, 2019 (Viking PSM 1–2–5, Revision 1). Do each initial task within 6 months after the effective date of this AD or at the threshold for each applicable task specified in Part 3 of Viking Product Support Manual PSM 1–2–5, Revision 1, whichever occurs later. Where Viking PSM 1–2–5, Revision 1, specifies contacting Viking for instructions on forward and rear fin attachment bolt replacement, inspection, and installation, and for a disposition regarding attachment bolts, this AD requires contacting the FAA, Transport Canada, or Viking's Transport Canada Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

Note 1 to paragraph (g): Viking DHC–2 Beaver Service Bulletin V2/0011, Revision NC, dated November 28, 2019, contains additional information related to this AD.

(2) After the action required by paragraph (g)(1) of this AD has been done, no alternative actions and associated thresholds and intervals, including life limits, are allowed unless they are approved as specified in paragraph (i) of this AD.

(h) Reporting

(1) For inspections done after the effective date of this AD, report to Viking any Level 2 or Level 3 corrosion, as specified in Viking PSM 1–2–5, Revision 1, at the times specified in and in accordance with part 3, paragraph 5, of Viking PSM 1–2–5, Revision 1.

(2) For inspections done before the effective date of this AD, within 30 days after the effective date of this AD report to Viking any Level 2 or Level 3 corrosion, as specified in Viking PSM 1–2–5, Revision 1, in accordance with part 3, paragraph 5, of Viking PSM 1–2–5, Revision 1.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in § 39.19. In accordance with § 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the New York ACO Branch, mail it to ATTN: Program Manager, Continuing Operational Safety, at the address identified in paragraph (j)(2) of this AD or email to: *9-avs-nyaco-cos@faa.gov.* If mailing information, also submit information by email.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved specifically for this AD by the Manager, New York ACO Branch, FAA.

(j) Additional Information

(1) Refer to the MCAI from Transport Canada, AD CF–2019–25, dated July 5, 2019, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2022–0190.

(2) For more information about this AD, contact James Delisio, Continued Operational Safety Program Manager, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (516) 228–7321; email: *9-avs-nyaco-cos@faa.gov.*

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (4) of this AD.

(k) Material Incorporated by Reference

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

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

(i) Viking DHC–2 Beaver Supplemental Inspection and Corrosion Control Manual,

[4] These revenue data come from online sources such as *zoominfo.com, opencorporates.com, buzzfile.com, manta.com, allbiz.com,* and *lookupcompanyrevenue.com.*

PSM 1–2–5, Revision 1, dated January 10, 2019.

(ii) [Reserved]

(3) For service information identified in this AD, contact Viking Air Limited Technical Support, 1959 De Havilland Way, Sidney, British Columbia, Canada, V8L 5V5; phone: (800) 663–8444; fax: (250) 656–0673; email: *technical.support@vikingair.com;* website: *vikingair.com/support/service-bulletins.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on April 13, 2023.

Christina Underwood,

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

[FR Doc. 2023–08551 Filed 4–24–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0985; Airspace Docket No. 23–ASO–16]

RIN 2120–AA66

Amendment of Class E Airspace; Cross City, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace extending upward from 700 feet above the surface for Cross City Airport, Cross City, FL, as a new instrument approach procedure has been designed for this airport. This action would also update this airport's geographic coordinates to coincide with the FAA's database.

DATES: Comments must be received on or before June 9, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–0985 and Airspace Docket No. 23–ASO–16 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 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 for Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would amend Class E airspace in Cross City, FL. This action is necessary to support IFR operations in the area.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the proposal's overall regulatory, aeronautical, economic, environmental, and energy-related aspects. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only once if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives and a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

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

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except for Federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except for Federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Incorporation by Reference

Class E airspace designations are published in Paragraph 6005 of FAA Order JO 7400.11, Airspace

Designations and Reporting Points, incorporated by reference in 14 CFR 71.1 annually. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. These updates would subsequently be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA proposes an amendment to 14 CFR part 71 to amend Class E airspace extending upward from 700 feet above the surface for Cross City Airport, Cross City, FL, to accommodate area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving this airport. This amendment supports a new instrument approach at this airport. The existing radius would be increased to 7 miles (previously 6.8-miles), and the southern extension would be eliminated. This action would also update the airport's geographic coordinates to coincide with FAA's database. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO FL E5 Cross City, FL [Amended]

Cross City Airport, FL
(Lat. 29°38′08″ N, long. 83°06′17″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Cross City Airport.

Issued in College Park, Georgia, on April 17, 2023.

Andreese C. Davis,

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

[FR Doc. 2023–08536 Filed 4–24–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 8 and 9

[Docket No. FR–6257–A–01]

RIN 2529–AB03

Nondiscrimination on the Basis of Disability: Updates to HUD's Section 504 Regulations

AGENCY: Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development (HUD).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advanced notice of proposed rulemaking (ANPRM) seeks the public's input on changes that the Department of Housing and Urban Development (HUD or the Department) is considering to its implementing regulations for Section 504 of the Rehabilitation Act of 1973 (Section 504) for federally assisted and HUD conducted programs and activities. Section 504 prohibits discrimination on the basis of disability in all programs and activities receiving Federal financial assistance and in programs and activities conducted by executive agencies. After this ANPRM is published, the Department intends to draft a Notice of a Proposed Rulemaking (NPRM) that would propose the adoption of an updated Federal accessibility standard for purposes of compliance with HUD's Section 504 regulations. In addition, the Department intends for this NPRM to propose revisions to HUD's Section 504 regulations to clarify recipients' obligations, including how to account for advances in accessible design, information and communication technology, and assistive technologies that have become available since HUD's Section 504 regulations were originally published in 1988.

DATES: *Comment Due Date:* July 24, 2023.

ADDRESSES: There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Electronic Submission of Comments. Comments may be submitted electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the *www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that website to submit comments electronically.

2. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451

7th Street SW, Room 10276, Washington, DC 20410–0500.

Note: To receive consideration as a public comment, comments must be submitted through one of the two methods specified above.

Public Inspection of Public Comments. HUD will make all properly submitted comments and communications available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, you must schedule an appointment in advance to review the public comments by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Amy Gioletti, Senior Policy Advisor, Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street SW, Room 5100, Washington, DC 20410, telephone 405–609–8561 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities who would like to submit comments. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 504 provides that ''no otherwise qualified individual with a disability in the United States shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any executive agency.'' 29 U.S.C. 794(a). Through Section 504, Congress requires the head of each executive agency to promulgate regulations to implement the statute. *Id.* In 1988, HUD issued its Section 504 regulations for federally assisted programs and activities at 24 CFR part 8 and for federally conducted programs and activities [1] at 24 CFR part 9.[2]

All recipients and subrecipients of Federal financial assistance from the Department (HUD recipients) must comply with Section 504 and 24 CFR part 8. HUD's Section 504 requirements apply broadly to any recipient of Federal financial assistance from the Department, including any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person that receives Federal financial assistance directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. 24 CFR 8.3 and 8.50(a). In addition, HUD has enforced Section 504 requirements against Tribal entities that receive Federal financial assistance from HUD. Federal financial assistance is also defined broadly as any assistance provided or otherwise made available by the Department through any grant, loan, contract, or any other arrangement in the form of funds, services, or property interest, excluding assistance through direct Federal procurement contracts or payments made under those contracts or any other contract of insurance or guaranty. 24 CFR 8.3.

HUD's Section 504 regulations at 24 CFR part 8 cover all programs and activities of recipients of funds from HUD, including, for example, eligibility criteria, application processes, site selection, admission to and continued participation in programs, tenancy, service delivery, and accessibility of programs and facilities. The regulations contain general prohibitions against discrimination and offer examples of discriminatory actions that either directly or indirectly result in discrimination against otherwise qualified individuals with disabilities. 24 CFR 8.4(a) and (b). Among other requirements, HUD's Section 504 regulations include an integration mandate, requiring recipients to administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities; reasonable accommodation requirements, which require recipients to adjust, modify, or make exceptions to policies or practices and structural modifications to facilities that may be necessary for an individual with a disability to equally participate in or benefit from programs and activities without discrimination; and the requirement to distribute accessible dwelling units throughout assisted projects and sites. 24 CFR 8.4(d), 8.20, 8.24(a), 8.26, and 8.33. Recipients must also take appropriate steps to ensure effective communication with applicants, beneficiaries, and members of the public who have disabilities. 24 CFR 8.6.

Recipients of Federal financial assistance from HUD must ensure that their programs and activities are readily accessible to and usable by individuals with disabilities. 24 CFR 8.20. This includes physical accessibility requirements for newly constructed and altered multifamily housing projects and non-housing facilities. This requirement also includes alterations to existing facilities that are necessary to comply with program accessibility requirements for all facilities. 24 CFR 8.20–8.25. Providers of existing assisted housing must operate such housing so, when viewed in its entirety, it is readily accessible to and usable by individuals with a disability. HUD recipients must comply with HUD's Section 504 regulations that incorporate the applicable Federal accessibility standard [3] adopted by the Department for purposes of Section 504 compliance.

The Uniform Federal Accessibility Standards (UFAS) is currently the Department's Section 504 Federal accessibility standard for compliance with HUD's Section 504 requirements. 24 CFR 8.32. However, in 2014, HUD published a Notice, commonly referred to as HUD's ''Deeming Notice,'' allowing HUD recipients to use the U.S. Department of Justice's (DOJ) accessibility standard under Title II of the Americans with Disabilities Act (ADA)—referred to as the 2010 ADA Standards for Accessible Design (2010 ADA Standards)—with identified exceptions, as an alternative

[1] The statutory text of Section 504 explains that ''program or activity'' means ''all of the operations of'' entities, under the statute, that receive Federal financial assistance. 29 U.S.C. 794(b). The term ''programs and activities'' is intended to cover the same types of operations that are covered under Title II of the Americans with Disabilities Act (ADA).

[2] For purposes of federally conducted programs and activities new construction and alterations must comply with the standard set by HUD under the Architectural Barriers Act, 42 U.S.C. 4151–4157. Under HUD's current regulations, the Uniform Federal Accessibility Standards are the architectural standards that are applicable to both federally assisted and federally conducted programs and activities.

[3] HUD uses the term ''Federal accessibility standard'' to refer to the architectural standard with which recipients of Federal financial assistance from HUD must comply under its Section 504 regulation. Under HUD's existing Section 504 regulation, HUD recipients may use one of two Federal accessibility standards—the Uniform Federal Accessibility Standards or HUD's Deeming Notice, as more fully explained below.

accessibility standard in lieu of UFAS for purposes of Section 504 compliance. 79 FR 29671 (May 23, 2014). HUD provided this flexibility through the Deeming Notice because of a recognition that many facilities are designed, constructed, or altered by entities that are subject to HUD's Section 504 regulations, which are also subject to Title II and/or Title III of the ADA and, therefore, are also required to comply with the 2010 ADA Standards. This option exists until HUD formally revises its Section 504 regulations to adopt an updated accessibility standard.

HUD recipients must also ensure that designated accessible dwelling units are dispersed throughout projects and sites, are available in a sufficient range of bedroom sizes and amenities, and are tenanted to maximize the utilization of such units by individuals who need the accessibility features of the units. 24 CFR 8.26 and 8.27.

HUD's existing Section 504 regulations also set forth a compliance and enforcement mechanism. 24 CFR 8.50 through 8.58. HUD's Office of Fair Housing and Equal Opportunity (FHEO) investigates individual complaints alleging disability-related discrimination and conducts compliance reviews of recipients of HUD assistance to determine whether they are complying with these requirements. 24 CFR 8.56(a). The regulations set out the procedures used when FHEO finds noncompliance with Section 504 requirements. 24 CFR 8.56, 8.57, and 8.58.

II. The Need To Update HUD's Section 504 Regulations and Section 504 Federal Accessibility Standard for HUD Programs and Activities

The Department's Section 504 regulations, as a whole, have not been significantly updated since their initial publication in 1988. Since that time, HUD has continued to find widespread discrimination on the basis of disability in HUD-assisted programs and activities and an ongoing need for affordable, accessible, and integrated housing opportunities for individuals with disabilities who are eligible for the programs and activities administered by recipients of Federal financial assistance from HUD. As the agency with primary responsibility for administering the Nation's federally assisted housing programs, HUD has a responsibility to ensure that its Section 504 regulations account for these needs.

In fiscal year 2020, HUD received four hundred and sixty-one (461) complaints from individuals and organizations alleging disability discrimination under Section 504. In fiscal year 2021, HUD received five hundred and ninety-seven (597) complaints from individuals and organizations alleging disability discrimination under Section 504. In fiscal year 2022, HUD received five hundred and eighty-two (582) complaints from individuals and organizations alleging disability discrimination under Section 504. To date, in fiscal year 2023, HUD has received two hundred and two (202) complaints from individuals and organizations alleging disability discrimination under Section 504. Section 504 complaints are the most common type of civil rights related complaint[4] received with respect to the administration of HUD programs and account for more than half of such complaints.

HUD-initiated Section 504 compliance reviews also underscore ongoing discrimination faced by individuals with disabilities. Significant noncompliance has been found with respect to physical accessibility requirements within public housing and other HUD-assisted affordable housing programs. Compliance reviews have demonstrated that newly constructed and substantially altered multifamily housing developments frequently do not meet the accessibility requirements under UFAS. Furthermore, compliance reviews often reveal that HUD-assisted programs and activities do not meet other Section 504 requirements such as the provision of reasonable accommodations, establishment and maintenance of grievance procedures, ensuring effective communication, appropriate tenanting policies to ensure maximum use of accessible housing by individuals with disabilities, occupancy preferences, or physical dispersal of accessible units. Designated accessible units are often not appropriately tenanted by individuals who have a disability-related need for the accessibility features of the unit. Other examples of common violations include the imposition of inappropriate disability verification requirements, the imposition of requirements beyond what is required in a lease, the failure to protect the confidentiality of applicants' or tenants' disability-related information, discrimination against individuals with intellectual and developmental disabilities and behavioral health conditions, and policies for the admission of elderly residents that exclude persons with a disability.

In the over thirty years since HUD implemented its Section 504 regulations, the percentage of the U.S. population who are individuals with disabilities has continued to increase and diversify. In addition, as a larger share of the population increases in age, HUD will continue to play a critical role in providing affordable housing opportunities to allow older adults to age in place. This is particularly important given the significant population of older adults with disabilities, who will require accessible and affordable housing to age in place. Likewise, the mobility devices, personal aids, and other forms of assistive technology available for use by individuals with disabilities have also diversified. The characteristics of equipment that individuals with disabilities use have changed in ways that impact the design and usability of living space and methods of communication.

Significant advances have also occurred in building practices since 1988. Various accessibility codes have been developed and additional features and elements have been researched based on study of how persons use, or cannot use, facilities because of inaccessible design and construction. Many design features that make the home more usable and accessible have become readily available and widely used in residential construction, such as additional or modified environmental controls, security hardware, cabinetry, and plumbing fixtures. Also, housing models have continued to emerge that focus on identifying and mitigating barriers to accessibility and safety hazards in the home to promote healthy aging and enhance health outcomes for older adults. In addition, the severe lack of affordable housing has caused communities across the country to explore new and innovative approaches to providing housing. Examples of emerging single family and multifamily housing include tiny homes, portable homes, manufactured or prefabricated homes, 3D printed homes, townhomes, multifamily with townhome facades, and even housing developed using shipping containers and other pre-existing structures. The Department seeks to respond to these environmental, societal, and technological changes in its revised rule.

The United States is also experiencing an immediate and increasing need for affordable, accessible, and integrated housing opportunities. In particular, since the Supreme Court's *Olmstead*

[4] Civil rights authorities include Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, Section 109 of the Housing and Community Development Act of 1974, and the Age Discrimination Act of 1975.

decision in 1999, there have been increased efforts to assist individuals in transitioning from institutional and other segregated settings into integrated, community-based settings.[5] As a result of *Olmstead* enforcement and implementation efforts by public entities, there is a crucial need for affordable and integrated housing where individuals with disabilities are able to live and interact with individuals without disabilities.[6] Individuals with disabilities cannot be subject to discrimination in their housing search.

HUD is considering how to more effectively address these significant and emerging issues and seeks public comment as it updates its Section 504 regulations.

III. Request for Public Comments

The Department seeks input from the public, including individuals with disabilities, HUD recipients, such as public housing agencies, States, or local governments, Tribes, housing providers, and social service providers, before proposing regulatory text for comment. The Department is posing overarching questions and areas for particular comment below regarding effective communication, program accessibility, adopting an updated Federal accessibility standard, and enforcement mechanisms. The Department is also considering clarifying certain subsections of the regulations and providing further examples to enhance compliance.

When providing responsive comments, the Department requests that commenters indicate the specific question number that corresponds with the responsive comments. If providing comments not associated with a question number, please label the comment as such or identify the comment by the existing regulatory provision to which it relates. The Department also welcomes general comments on any aspect of its Section 504 regulations or how the Department can improve the administration of its federally assisted and federally conducted programs to ensure its own compliance with Section 504.

Question for Comment 1: The Department anticipates revising the definition of ''individual with disabilities'' consistent with the ADA Amendments Act of 2008[7] and DOJ's Title II ADA regulations. The ADA Amendments Act of 2008 revised the definition of ''individual with disabilities'' for purposes of the ADA and made conforming amendments to Section 504. In view of the ADA Amendments Act of 2008's change to the definition of disability, the Department is also considering whether the other definitions, currently provided at 24 CFR 8.3 should be revised to clarify how the term ''disability'' is used in connection with certain HUD programs, which have statutory authorizations to serve specific populations. The Department seeks general comments on updating its definitions contained at 24 CFR 8.3.

Question for Comment 2: HUD's Section 504 regulations at 24 CFR 8.4 contain general prohibitions on discrimination and include examples of discriminatory application processes, admissions policies, and service provision, as well as physical inaccessibility, eligibility, and site selection, that would either directly or indirectly result in discrimination against otherwise qualified individuals with disabilities. 24 CFR 8.4(a) and (b).

(*a*) To what extent are individuals with disabilities at serious risk of entering institutional settings or being unable to transition from institutional or group home settings, including skilled nursing facilities, correctional institutions and inpatient rehabilitation for substance misuse, settings because they are unable to find affordable, accessible, and integrated housing opportunities in community-based settings? Please describe any challenges faced and solutions identified with locating affordable, integrated, and accessible housing, including issues such as ensuring housing is available when an individual is ready to transition from an institutional setting, coordinating housing and services, identifying available housing programs that individuals may be eligible for, the referral and/or application process, the use of preferences, the operation of waitlists, insufficient accessible and integrated housing opportunities, etc.

(*b*) Are there specific examples of discrimination that individuals with mental health or substance use disabilities have experienced, or other challenges faced by such individuals, in securing affordable housing, such as rental policies eligibility or exclusion criteria, that meets disability-related needs that HUD should consider addressing in its Section 504 regulations?

(*c*) Are there specific examples of discrimination that individuals with intellectual, cognitive, or developmental disabilities have experienced, or other challenges faced by such individuals, in securing affordable housing that meets the disability-related needs that HUD should consider addressing in its Section 504 regulations?

(*d*) Are there specific examples of discrimination that individuals with physical disabilities have experienced, or other challenges faced by such individuals, in securing affordable housing that meets the disability-related needs that HUD should consider addressing in its Section 504 regulations?

Question for Comment 3: Recipients must take appropriate steps to ensure effective communication with applicants, beneficiaries, and members of the public who have disabilities and are required to provide appropriate auxiliary aids and services where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, a program or activity receiving Federal financial assistance. Because of technological advances, methods of enabling effective communication have significantly changed since HUD issued its Section 504 regulations in 1988 and recipients and individuals with disabilities communicate in different ways. What types of auxiliary aids and services do individuals with disabilities need in housing and community development programs and activities? What information should the Department consider with respect to the accessibility of recipients' websites and devices, mobile applications, etc.?

Question for Comment 4: Section 504 requires that newly constructed housing and non-housing facilities be designed and constructed to be readily accessible to and usable by persons with disabilities. HUD's existing Section 504 regulations require that in new construction multifamily housing projects, currently a minimum of five (5) percent of the total dwelling units in each multifamily housing project (or at least one unit, whichever is greater) must be made accessible for persons with mobility impairments. An additional two (2) percent of the total units (or at least one unit, whichever is greater) must be made accessible for persons with hearing or vision impairments. In circumstances where greater need is demonstrated, HUD may prescribe higher percentages or numbers. 24 CFR 8.20 through 8.22. Physical accessibility requirements also apply to any alterations of housing and non-housing facilities. 24 CFR 8.21.

[5] *Olmstead* refers to the 1999 Supreme Court decision, *Olmstead* v. *L.C.,* 527 U.S. 581 (1999), wherein the Supreme Court affirmed that the unjustified segregation of individuals with disabilities is a form of discrimination prohibited by Title II of the Americans with Disabilities Act.

[6] *See* HUD's Statement on the Role of Housing in Accomplishing the Goals of *Olmstead, https://www.hud.gov/sites/documents/OLMSTEADGUIDNC060413.PDF.*

[7] Public Law 110–325 (Sept. 25, 2008).

Additionally, recipients must operate each housing and non-housing-related program and activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. 24 CFR 8.20, 8.21, and 8.24. This may require alterations to comply with program accessibility obligations in older facilities that were built before HUD's Section 504 regulations became effective. This may also require alterations in addition to and separate from meeting the affirmative physical accessibility requirements described above.

(*a*) To what extent does the lack of accessible units and other facilities in assisted housing discourage applications from eligible persons with a disability? To what extent is the lack of accessibility a barrier to the participation in various HUD-assisted housing programs by persons with a disability? What challenges do households face in finding available affordable and accessible housing in their respective communities? What factors or sources of data should HUD and its recipients use to determine the level of need for accessible housing?

(*b*) Is there information that HUD should consider to clarify, strengthen, and encourage compliance by recipients' with program accessibility obligations?

Question for Comment 5: Tenant-based housing choice voucher (HCV) and other tenant-based rental assistance programs are crucial to enable individuals with disabilities to secure affordable, accessible, and integrated housing opportunities of their choice. HUD's regulation at 24 CFR 8.28 provides examples of specific safeguards to ensure individuals with disabilities have access to these programs.

(*a*) What challenges exist in using an HCV or other tenant-based rental assistance in the private rental market to secure a unit that meets a household's disability-related needs? For example, is the process for households with members with disabilities to seek an extension of the search term due to the lack of accessible housing effective or is the process for seeking exception rent under the exception payments standard for accessible housing units effective, and/or what other difficulties exist for individuals with disabilities in securing a suitable unit? Do households with members with disabilities encounter issues using HCVs or other tenant-based rental assistance due to the need for live-in caregivers? Is there information that HUD should consider on various methods or approaches that have proven effective in helping individuals with disabilities access these types of programs in order to provide equal access?

(*b*) Please provide details about the availability of affordable accessible units in different areas of the United States (*e.g.,* urban areas, suburban areas, and rural areas, including geographically isolated and remote areas) in the private rental market and any proven strategies that encourage landlords to participate in the tenant-based HCV program.

Question for Comment 6: Most entities are subject to more than one Federal accessibility law and architectural standard in the operation of their housing services, programs, and activities. For example, a public housing agency receiving HUD funding and operating public housing and voucher programs may be subject to the design and construction requirements of the Fair Housing Act,[8] Section 504 as a recipient of Federal financial assistance, and Title II of the ADA as a public entity. This may require applying multiple accessibility laws and architectural standards, *e.g.,* the Fair Housing Act's Accessibility Guidelines, the 2010 ADA Standards under Title II of the ADA, and HUD's Section 504 accessibility standard. In addition, State and local laws and building codes will also apply. Most States and localities now use the International Building Code (IBC) and the accessibility standard it references, the ICC A117.1 Standard for Accessible and Usable Buildings and Facilities.

The Department seeks input on ways to harmonize, to the extent possible, the requirements among the various standards and achieve greater consistency in the design and construction of buildings and facilities that are covered by multiple Federal accessibility laws. The Department also seeks to ensure, however, that accessibility for persons with disabilities is not reduced and opportunities for modernization of accessibility requirements are considered.

The Department notes that recipients of HUD funding must be aware of and comply with the accessibility requirements of all applicable laws, including Section 504, the ADA, and the Fair Housing Act. Compliance with one of these statutes does not ensure compliance with other Federal disability nondiscrimination laws. HUD's adoption of an updated Section 504 Federal accessibility standard for purposes of compliance with its own Section 504 regulations does not change an entity's obligation to comply with all applicable laws.

What standards should the Department consider for purposes of an updated accessibility standard for its recipients? HUD requests information to assist the Department in determining whether other specific guidelines provide sufficient or insufficient accessibility in the context of housing or other residential facilities funded by HUD. In addition, please provide information on scoping and other technical provisions the Department should consider to further accessibility for individuals with disabilities in the context of housing.

Question for Comment 7: HUD's Deeming Notice allowed HUD recipients to use the 2010 ADA Standards under Title II of the ADA—with identified exceptions, as an alternative accessibility standard in lieu of UFAS for purposes of Section 504 compliance. The Deeming Notice identified eleven (11) exceptions where UFAS provides greater accessibility than the 2010 ADA Standards and must continue to be utilized.[9] Are there other UFAS provisions that HUD did not identify in its Deeming Notice that should be retained to further accessibility in HUD-assisted programs?

Question for Comment 8: As the Federal agency with primary responsibility for administering the Nation's federally assisted housing programs, the Department has a unique role in considering how residential and connected spaces (*e.g.,* spaces for laundry, mail, telecommunications, office, maintenance, parking, recreation, service, and community functions) must be made accessible. HUD is looking at the accessibility and usability of spaces and elements within one's own home and connected spaces that will impact daily living, which is different than considering accessibility in places of public accommodation or other settings. HUD is considering how the development of various enhanced

[8] 42 U.S.C. 3601 *et seq.*

[9] (1) Section 35.151(a)(2) Exception for structural impracticability; (2) Section 35.151(b) Alterations; (3) Section 202.2 Additions; (4) Exception to Section 202.4 Alterations Affecting Primary Function Areas; (5) Section 203.8 General Exceptions—Residential Facilities; (6) Employee Work Areas: Sections 203.9 (General exception for employee work areas), 206.2.8 (Circulation paths in employee work areas), and the Exceptions to 403.5 (Clearances within employee work areas) and 405.8 (Handrails within employee work areas); (7) Exception 2 to Section 206.2.1 Site Arrival Points; (8) Exception to Section 206.2.2 Within a Site; (9) Exception 1 to Section 206.2.3 Multi-Story Buildings and Facilities; (10) Section 214—Scoping of Washing Machines and Clothes Dryers; (11) Exception to Section 215.1 Visible Alarms.

accessibility features can be incorporated or incentivized into the design and construction of affordable housing developments.

Advances in the types of accessibility features can assist individuals with various types of disabilities obtain, remain in, and receive the full benefits of their housing. For example, for individuals with mobility disabilities, such features may include: power operated or other keyless proximity-based entry at entrances and exits from buildings and passageways through the building; light weight or low resistance doors; detachable shower-heads; smart, remotely adjustable thermostats; adjustable shelves in closets and storage; full extension pull-out drawers, shelves, and racks; roll-in showers; avoiding swinging interior doors within individual accessible dwelling units; faucets with touch or motion sense water controls; and reinforced ceilings to accommodate a track and harness system. For individuals who are blind or have low vision, examples of such features may include: audible elevator indicators; innovative entry systems that do not solely rely on an individual's ability to see in order to gain access; controls with audio feedback as opposed to or in addition to touch screens; and enhanced lighting. For individuals who are deaf or hard of hearing, examples of such features may include: innovative entry systems that do not solely rely on an individual's ability to hear in order to gain access; doorbells with light alerts; activated close captioning on televisions located in public areas; and video phones or other video connections for communications.

In addition, specific accessibility features assist individuals to remain in their homes and to age in place, such as vertical and angled grab bars to get up and down from toilets and for stepping in and out of bathing fixtures. Examples to assist individuals who are blind or have low vision include contrasting surfaces, enhanced lighting, tactically discernible controls, and elimination of tripping hazards. Examples to assist individuals who are deaf or hard of hearing include innovative entry systems, doorbells with light alerts, and emergency alarms for fire and carbon monoxide leaks that can accommodate personal notification devices.

(*a*) What barriers do individuals with disabilities face in public and common use areas of housing and non-housing facilities (*e.g.,* building entrances, building entry systems, recreation and fitness facilities, mail and package rooms, coworking facilities, parking structures, laundry rooms)? What accessibility features or advanced technology can help overcome these barriers?

(*b*) What accessibility features or advanced technology should the Department be aware of that improve accessibility in designated accessible units for individuals with mobility disabilities?

(*c*) What accessibility features or advanced technology should the Department be aware of that improve accessibility in designated accessible units for individuals with vision and hearing disabilities?

(*d*) Given the increasing aging population, the Department is considering its role in providing affordable housing opportunities to this population and how to enable households to remain in their housing. Are there specific accessibility features that can help individuals to age in place?

(*e*) There are alternative accessibility provisions in accessibility standards that address the more limited reach ranges and need for lower seat heights and dining surfaces for children with disabilities that are different than accessibility features configured for adult use. The Department is interested in any comments related to dimensions for children.

(f) To what extent does the failure to maintain accessible features, including elevators and lifts, limit individuals with disabilities access to affordable housing?

Question for Comment 9: HUD is considering how advances in the design and construction field impact accessible housing developments. There are various types of single family and multifamily housing, as well as a variety of materials and structural components to construct different types of housing, such as shipping containers or other emerging building components. In all instances, federally assisted housing must provide accessible housing opportunities for beneficiaries with disabilities.

(*a*) Are there specific emerging design approaches, or specific construction materials that HUD should consider?

(*b*) The Department is interested in comments related to emerging design approaches in disaster response, mitigation, and recovery situations. Are there specific design types or other issues specifically within the context of disaster relief that HUD should consider addressing to ensure accessibility for individuals with disabilities?

Question for Comment 10: A reasonable accommodation is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with disabilities to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces, or to participate in a HUD-assisted program or activity. For purposes of Section 504, this also includes recipients providing structural changes to a unit or public or common use area when they may be needed as a reasonable accommodation. Generally, the failure to provide reasonable accommodation is a form of discrimination under Section 504. HUD anticipates further addressing the concept of what constitutes a reasonable accommodation in its Section 504 regulations. HUD is aware that it may be useful to its recipients to understand the broad array of the types of accommodations that may be useful to individuals with different types of disabilities, such as individuals who are blind or have low vision, individuals who are deaf or hard of hearing, individuals with intellectual, cognitive, or developmental disabilities, individuals with mental health disabilities or substance use disabilities, and individuals with mobility disabilities. The Department is interested in comments on these issues.

Question for Comment 11: HUD undertakes two types of investigations under its Section 504 regulations—complaint-based investigations and compliance reviews. Any person, or their authorized representative, who believes that they have been subjected to discrimination by a recipient of HUD financial assistance may file a Section 504 complaint with HUD. Similarly, persons may file a complaint with HUD on behalf of specific classes of individuals who have been subjected to discrimination by a recipient.

HUD may conduct periodic compliance reviews of recipients that include a review, including an on-site review of recipients' policies, practices, and procedures, to determine whether recipients are complying with HUD's Section 504 regulations. Recipients are also subject to program compliance reviews and monitoring procedures by HUD in its oversight of program requirements designed to further compliance with HUD's Section 504 regulations. 24 CFR 8.56. Are there any clarifications or changes HUD should consider in procedures for initiating and conducting investigations and/or enforcement mechanisms with respect to individual complaints or compliance reviews?

Question for Comment 12: HUD has enforced Section 504 requirements against Tribes and Tribal entities that receive HUD Federal financial assistance. While the Department

recognizes Section 504 obligations are consistent across all recipients of HUD Federal financial assistance, the Department also recognizes the unique relationship between the Federal Government and Tribes and seeks comment from Tribes and Tribal entities in accordance with HUD's Government-to-Government Tribal Consultation Policy.

(*a*) Are there tribal specific circumstances that HUD should consider regarding Tribes and tribal entities, particularly with respect to the construction of accessible facilities?

(*b*) Are there unique types of discrimination members of Tribes with disabilities experience, particularly with respect to non-Tribal grantees or other entities covered by Section 504?

(*c*) Are there unique types of discrimination members of Tribes with disabilities experience with respect to the provision of reasonable accommodations, the provision of appropriate auxiliary aids and services necessary to ensure effective communication, access to accessible facilities, or accessing services and programs in the most integrated setting appropriate to the needs of members of Tribes with disabilities?

Question for Comment 13: The Department recognizes that individuals with disabilities who are also members of other protected class groups (*e.g.,* race, color, national origin, sex (including sexual orientation and gender identity), familial status, religion, age, etc.) may be uniquely impacted by revisions to HUD's Section 504 regulations and is interested in receiving public comment on unique considerations related to intersectionality.

(*a*) Are there unique barriers or other forms of discrimination in housing or HUD assisted programs against individuals with disabilities who are also members of other specific protected class groups?

(*b*) In particular, is there information that HUD should consider regarding how disability discrimination affects persons of color, LGBTQ+ persons, families with children, older adults, and individuals with limited English proficiency who also require appropriate auxiliary aids and services necessary to ensure effective communication?

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to, ''identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.''

HUD's Section 504 regulations have not been significantly updated since originally published in 1988; whereas significant advances in building practices and assistive technologies have been made during the preceding decades. Additionally, since HUD's Section 504 regulations were first published, the percentage of the U.S. population with disabilities has continued to increase and diversify and, during this time, a larger share of the population has increased in age. Given these changes in the availability and improvement of accessibility design and technologies and the changes in the makeup of the American population that require or benefit from the improvements in accessibility and design and technologies, this ANPRM is necessary to avoid HUD's Section 504 regulations from becoming outmoded, ineffective, and insufficient.

This ANPRM has been reviewed by OMB. As a result of this review, OMB determined that this ANPRM will likely result in a ''significant regulatory action,'' as defined in section 3(f) of Executive Order 12866 but not an ''economically significant'' action.

Environmental Review

This ANPRM sets out nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), it is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321–4347).

Demetria McCain,

Principal Deputy, Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 2023–08464 Filed 4–24–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 733 and 842

[Docket ID: OSM–2022–0009; S1D1SSS08011000SX064A000201S180110; S2D2S SS08011000SX064A0022XS501520]

RIN 1029–AC81

Ten-Day Notices and Corrective Action for State Regulatory Program Issues

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) proposes to amend the regulations related to notifying a State regulatory authority of a possible violation of any requirement of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed rule would also amend the Federal regulations regarding corrective actions for State regulatory program issues. Together, the proposed updates to these two areas of the Federal regulations would amend the overall ''ten-day notice'' (TDN) process. Although a final rule covering these topics went into effect in 2020 (2020 TDN Rule), the rule has proven to delay our consideration of some possible SMCRA violations. In 2021, the Department of the Interior undertook a reexamination of the 2020 TDN Rule and decided to engage in this rulemaking effort. The primary goals of this rulemaking are to reduce burdens for citizens to engage in the TDN process, establish procedures for OSMRE to properly evaluate and process citizen allegations about possible SMCRA violations, clearly set forth the regulatory requirements for the TDN process, and continue to minimize the duplication of inspections, enforcement, and administration of SMCRA. In addition, we will continue to afford our State regulatory authority partners due deference during the TDN process to an extent that is appropriate under SMCRA. The proposed rule would ensure that possible SMCRA violations are properly identified and addressed in a timely fashion. When OSMRE obtains adequate proof of an imminent harm, OSMRE would immediately conduct a Federal inspection, outside of the TDN process, as SMCRA requires. Overall, we believe that this proposed rule would align more closely than the 2020 TDN Rule with SMCRA's requirements.

DATES: We will accept comments received or postmarked on or before

11:59 p.m. Eastern Daylight Time (EDT), June 26, 2023. We must receive comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** below) by 11:59 p.m. EDT on the closing date.

Upon request, we will hold a public hearing or a public meeting on the proposed rule at a date, time, and location to be announced in the **Federal Register** before the hearing. We will accept requests for a public hearing or meeting until June 9, 2023.

ADDRESSES: You may submit comments, identified by OSM–2022–0009 and RIN 1029–AC81, by any of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the search box, enter the Docket ID listed above. You may submit a comment by clicking on ''Comment''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Mail Stop 4550, Main Interior Building, Washington, DC 20240, Attention: Division of Regulatory Support.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Comment Procedures, below, for more information).

FOR FURTHER INFORMATION CONTACT: William R. Winters, OSMRE, Division of Regulatory Support, 1849 C Street NW, Mail Stop 4550, Washington, DC 20240, telephone number: (202) 208–1908. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at: (800) 877–8339.

SUPPLEMENTARY INFORMATION:

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II. Background
III. Section-by-Section Analysis
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I. Public Comment Procedures

You may submit written comments, identified with OSM–2022–0009 or RIN 1029–AC81, by any of the methods described in the **ADDRESSES** section. Written comments submitted on the proposed rule should be specific, be confined to issues pertinent to the proposed rule, and explain the reason for any recommended change. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. The comments and recommendations that will be most useful and likely to influence agency decisions are those that are supported by quantitative information or studies; are based on specific, identifiable experience; and include citations to, and analyses of, the applicable laws and regulations.

Comments received after the close of the comment period (see the **DATES** section) or that are delivered to addresses other than those listed above (see the **ADDRESSES** section) may not be considered or included in the Decision File for the final rule.

Comments, including names and street addresses of respondent commenters, will be available for public review at the address listed under **ADDRESSES** during regular business hours (8 a.m. to 4:30 p.m. ET), Monday through Friday, except holidays.

Please be advised that we may make your entire comment—including your personal identifying information, such as your name, phone number, or email address—publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to grant your request.

II. Background

A. Proposed Rule Summary

Under SMCRA, each State that wishes to regulate surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders can submit a proposed State regulatory program to the Secretary of the Interior. 30 U.S.C. 1253(a). The Secretary, acting through OSMRE, reviews and approves or disapproves the proposed program. 30 U.S.C. 1211(c)(1), 1253(b). When the Secretary approves a State program, the State assumes exclusive jurisdiction or ''primacy,'' except as provided in sections 521 and 523 and title IV of SMCRA. 30 U.S.C. 1253(a), 1271, 1273, and 1231–1244. Under the exception at 30 U.S.C. 1271(a)(1), in a primacy State that has an approved State regulatory program, OSMRE retains oversight of the State program and some Federal enforcement authority. In this regard, SMCRA sometimes refers to a State regulatory authority as having ''primary'' responsibility. *See, e.g.,* 30 U.S.C. 1201(f) and 1291(26) (defining ''State regulatory authority'' to mean ''the department or agency in each State which has primary responsibility at the State level for administering [SMCRA]'').

This proposed rule concerns the TDN process that derives from section 521(a)(1) of SMCRA, 30 U.S.C. 1271(a)(1), and the provisions for correction of State regulatory program issues, consistent with section 521(b) of SMCRA, 30 U.S.C. 1271(b). Under the TDN process, when the Secretary of the Interior, acting through OSMRE, has ''reason to believe that any person is in violation of any requirement'' of SMCRA, OSMRE notifies the appropriate State regulatory authority. After OSMRE sends the notification to the State, the State has ten days to take ''appropriate action'' to cause the possible violation to be corrected or to demonstrate ''good cause'' for not doing so. If the State regulatory authority fails to respond within ten days, or if we determine that the State's response is arbitrary, capricious, or an abuse of discretion, we will conduct a Federal inspection and take appropriate enforcement action.

Given the ten-day time frame, the notice that OSMRE sends to State regulatory authorities under this provision is referred to as a TDN. While citizens, industry, and regulatory authorities have commonly understood this terminology, we propose to define ''ten-day notice'' for the first time in the Federal regulations so there is a uniform, consistent understanding of the term. Similarly, because possible violations identified in a ''citizen complaint'' are at the heart of this proposed rule, we are also proposing to define that term for the first time in the Federal regulations.

We are proposing that all citizen complaints will be considered as requests for Federal inspections, even if a citizen complaint does not specifically request an inspection. The 2020 TDN Rule requires citizens, when requesting a Federal inspection, to provide a statement that the person has notified the State regulatory authority of the existence of the possible violation. However, the existing regulations for citizen complaints do not explicitly contain a similar requirement. To resolve this issue, we believe it is important to not require citizens, who likely are not experts on SMCRA and the implementing regulations, to use certain words or phrases in their complaint to communicate their requested action to OSMRE. This approach also makes sense because if a citizen brings a possible violation to our attention, and we issue a TDN to the relevant State regulatory authority, that process could ultimately lead to a Federal inspection if the regulatory authority does not take appropriate action or demonstrate good cause for not

doing so in response to the TDN, regardless of whether the citizen initially asked for a Federal inspection to be undertaken.

We are also proposing to amend the regulations at 30 CFR 842.12(a), which relate to requesting a Federal inspection, to make the process easier for citizens by removing the requirement for a citizen to also notify the relevant State regulatory authority when requesting a Federal inspection. SMCRA does not require that a citizen notify the State regulatory authority before filing a citizen complaint with OSMRE. However, we continue to believe that if a citizen contacts the State regulatory authority in the first instance, most possible violations will be resolved without the need for OSMRE to issue a TDN. To that end, we continue to strongly encourage citizens to contact the State regulatory authority about possible violations, as the State regulatory authority should be more acquainted with conditions on the ground for permits that it has issued and is often in the best position to determine the merits of a citizen complaint.

We are also proposing to remove the requirement at existing § 842.12(a) for a citizen, when requesting a Federal inspection,[1] to set forth ''the basis for the person's assertion that the State regulatory authority has not taken action with respect to the possible violation.'' We believe this provision is onerous and cumbersome. For example, if a citizen is filing a complaint with OSMRE, the citizen implicitly believes that there is a violation that the State regulatory authority has not addressed. And again, because citizens are not likely to be experts on the administration of SMCRA and the applicable State regulatory program, it is unduly onerous to require a citizen to cite the applicable requirements for the basis of their assertion. Moreover, citizens will not be in a position to determine a State official's reasoning for the lack of action regarding the possible violation.

Over the years, we have found that while most citizen complaints have merit, many raise issues unrelated to possible violations of SMCRA or the State regulatory program. For that reason, and to reduce duplication of inspection and enforcement efforts between OSMRE and State regulatory authorities, in the 2020 TDN Rule, we expanded the sources of information that OSMRE would consider when determining whether we have reason to believe a violation exists under a State regulatory program. Before 2020, the Federal regulations arguably implied that OSMRE could consider only information contained within the confines of a citizen complaint when determining whether there was reason to believe a violation existed that would necessitate issuance of a TDN to a State regulatory authority. For example, the pre-2020 regulations provided that OSMRE would have reason to believe that a violation exists if the facts alleged in a citizen complaint would, if true, constitute a violation. *See* 30 CFR 842.11(b)(2) (2019). But the pre-2020 regulations also provided that OSMRE should base its reason to believe determination upon ''information available.'' *See id.* at § 842.11(b)(1)(i). In the 2020 TDN Rule, we sought to remove any inconsistencies in the prior regulations by requiring OSMRE to consider ''readily available'' information, including information from a State regulatory authority. Some commenters on the 2020 TDN proposed rule contended that allowing OSMRE to gather information before determining whether it has reason to believe a violation exists implied that OSMRE did not have the information at the time of the citizen complaint. By using the phrase ''readily available'' in the 2020 TDN Rule, we intended to confine OSMRE's information gathering so that we could determine, as quickly as possible, whether a TDN was warranted. *See, e.g.,* 85 FR 75157 (Nov. 24, 2020). In the 2020 TDN Rule, we also explained that when we receive a citizen complaint, we will apply our professional judgment and not merely transmit the citizen complaint to a State regulatory authority without considering whether we have reason to believe a violation exists.

After reexamining the 2020 TDN Rule and SMCRA's legislative history, and based upon our experience implementing the rule for more than two years, we have decided to further clarify OSMRE's evaluation of a citizen complaint: instead of considering all ''readily available information'' when determining whether we have reason to believe a violation exists, we propose to limit the sources of information that we will consider to information received from a citizen complainant, information available in our files at the time that we are notified of the possible violation, and any publicly available electronic information. In implementing this section of the 2020 TDN Rule, we found that the data collection process took longer than expected. We believe that the approach outlined in this proposed rule would continue to reduce any duplication of inspection and enforcement efforts between OSMRE and the relevant State regulatory authority and better align with SMCRA's statutory requirements and legislative history.

We further propose to amend the regulations to return to our longstanding practice of requiring the issuance of a TDN, in the first instance, when we have reason to believe a violation exists in the form of a so-called ''permit defect.'' Although that term is not used in SMCRA and has not been used in the Federal regulations, OSMRE has used the term in guidance documents. We generally consider a permit defect to be a deficiency in a permit-related action taken by a State regulatory authority, such as when a State regulatory authority has issued a permit with a provision that is contrary to the approved State program. We propose to specify that we will issue a TDN for such defects when we form the necessary reason to believe a violation exists.

Existing § 842.11(b)(1)(ii)(B)(*3*) allows a corrective action plan to constitute ''appropriate action'' in response to a TDN. This proposed rule would exclude an action plan from the categories of ''appropriate action'' in response to a TDN because action plans do not themselves remedy violations. *See* § 842.11(b)(1)(ii)(B)(*3*). Instead of allowing the use of these plans to be considered appropriate action, we propose that if we and the relevant State regulatory authority enter into an action plan that includes the possible violation as one of several substantively similar possible violations, such a plan could constitute ''good cause'' for not taking action within ten days. A completed action plan would lead to corrective action on the initial violation, as well as other similar violations.

We have determined that the changes in this proposed rule would enhance the overall administration and enforcement of SMCRA, while continuing to honor State primacy, and correspond more closely to SMCRA's statutory requirements. Once a State has achieved primacy under SMCRA to administer its own State regulatory program, section 201(c)(12) of SMCRA requires us to, among other responsibilities, ''cooperate with . . . State regulatory authorities to minimize duplication of inspections, enforcement, and administration of

[1] It is important to note that, under 30 U.S.C. 1271(a)(1), when a person supplies OSMRE with ''adequate proof that an imminent danger of significant environmental harm exists and that the State has failed to take appropriate action,'' OSMRE will proceed directly to a Federal inspection. This proposed rule pertains only to the TDN process, and not imminent harm situations, which are addressed separately under the SMCRA provision at 30 U.S.C. 1271 and the applicable existing regulations at 30 CFR parts 842 and 843.

[SMCRA].'' 30 U.S.C. 1211(c)(12). To this end, we have worked closely with State regulatory authorities for over 40 years, and we will continue to do so. Equally germane to our intent in this proposed rule, one of the purposes of SMCRA is to ''assure that appropriate procedures are provided for the public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by the Secretary or any State under [SMCRA.]'' 30 U.S.C. 1202(i). With this in mind, this proposed rule would provide a better balance between minimizing duplication of efforts with the State regulatory authorities and affording citizens an appropriate level of involvement in enforcement of SMCRA programs.

B. Statutory and Regulatory Background

Two provisions of SMCRA chiefly govern our oversight and enforcement of State regulatory programs. Section 521(a)(1), 30 U.S.C. 1271(a)(1), in context, requires us to notify a State regulatory authority when we have ''reason to believe'' that any person is in violation of any requirement of SMCRA, the approved regulatory program, an approved permit, or a required permit condition. As explained above, when we have reason to believe a violation exists, we issue a TDN to the applicable State regulatory authority. Upon receipt of the TDN, the State regulatory authority has ten days to cause the possible violation to be corrected or show good cause for not taking action and communicate either action to us. In general, if the State regulatory authority fails to respond within ten days, we must immediately order a Federal inspection of the surface coal mining operation where the described violation is alleged to be occurring.

Section 521(b) of SMCRA, 30 U.S.C. 1271(b), addresses the situation of a State regulatory authority failing to effectively implement any part of its approved State program. The relevant existing regulations implementing section 521(b) of SMCRA are found at 30 CFR part 733. The 2020 TDN Rule revised provisions in 30 CFR part 733 in an effort to address State regulatory program issues before they rise to the level that would require us to take over administration of all or part of an approved State program under section 521(b). This proposed rule would retain the basic structure of the 2020 TDN Rule, but would amend 30 CFR 733.5 and 733.12 to comply more fully with SMCRA's statutory requirements.

SMCRA creates a cooperative federalism framework between OSMRE and State regulatory authorities to ensure that SMCRA is properly administered and enforced. As mentioned above, each State desiring to implement SMCRA on non-Federal and non-Indian lands within its borders must submit a proposed SMCRA program to the Secretary of the Interior for review and approval. 30 U.S.C. 1253. Federally recognized Indian Tribes may also obtain primacy over Indian lands within their jurisdiction. *Id.* section 1300(j). SMCRA gives OSMRE the authority to conduct the review for the Secretary. *Id.* section 1211(c)(1). OSMRE must review each proposed program to ensure, among other things, that it is in accordance with the requirements of SMCRA. Once a State or Tribal regulatory authority obtains approval of its SMCRA program, it has achieved ''primacy'' and becomes the primary entity through which SMCRA is implemented and enforced on lands within its jurisdiction. In primacy States, we have an oversight role over approved State regulatory programs, primarily through SMCRA section 521, 30 U.S.C. 1271.

In our oversight role, any time we have reason to believe that any person is in violation of SMCRA, the applicable State regulatory program, or any required permit condition, we inform the State regulatory authority through a TDN. The information that informs our ''reason to believe'' that a violation exists can come from any person, but, most often, we become aware of a possible violation through a Federal oversight inspection or a citizen complaint. If we become aware of a possible violation by means other than through a Federal oversight inspection, we must determine if we have reason to believe a violation of SMCRA or the applicable State regulatory program exists. Neither SMCRA nor the Federal regulations defines the ''reason to believe'' standard. However, the ''reason to believe'' standard that would support issuance of a TDN for a possible violation is a lower standard than ''reason to believe'' when it is coupled with ''adequate proof'' of an imminent harm that would require OSMRE to bypass the TDN process and proceed directly to a Federal inspection.

Once a State receives a TDN, it has ten days to take appropriate action to cause the possible violation to be corrected or show good cause for not taking action and communicate its action to us. A TDN that results from a citizen complaint is not a direct enforcement action, a finding that any form of violation exists, or a determination that the State has acted improperly. Rather, as SMCRA envisioned, a TDN is a communication mechanism between OSMRE and the applicable State regulatory authority indicating that a *possible* violation exists. (Under 30 CFR 843.12(a)(2), however, we also issue a TDN to a State regulatory authority when, on the basis of a Federal oversight inspection, we determine that there is a non-imminent harm violation and we have not previously issued a TDN for the same violation.) The TDN communication mechanism allows the State the first opportunity to investigate and enforce possible non-imminent harm violations. After we send the TDN to the State, we do not take any other action regarding the possible violation during the ten-day period.

Once a State has communicated its action in response to a TDN to us, we review the State's response to determine whether it constitutes appropriate action or good cause. Under 30 CFR 842.11(b)(1)(ii)(B)(*2*), we accept the State's action or response as appropriate action or good cause unless it is arbitrary, capricious, or an abuse of discretion. After receiving the State's response to the TDN, but before a Federal inspection, we determine in writing whether the standards for appropriate action or good cause have been satisfied. *Id.* at § 842.11(b)(1)(ii)(B)(*1*).

If the State regulatory authority does not respond to the TDN within ten days, we make a determination on the TDN and proceed to a Federal inspection. Failure to respond constitutes a waiver of the right to request informal review of the determination under 30 CFR 842.11(b)(1)(iii). *Id.* After a written determination that the State did not take appropriate action or has not shown good cause for not taking action, the State then has an opportunity to seek informal review of the determination within OSMRE. *Id.* § 842.11(b)(1)(iii)(A). In general, subject to the exceptions noted in § 842.11(b)(1)(iii)(B), when a State regulatory authority requests informal review, the informal review process must conclude before we conduct a Federal inspection or issue a Federal notice of violation regarding the TDN. If, during a Federal inspection, we confirm the existence of a violation, we write a Federal notice of violation or, if applicable, a cessation order to the permittee. *Id.* § 843.12(a)(2).

Section 201(c)(2) of SMCRA, 30 U.S.C. 1211(c)(2), requires us to ''publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of [SMCRA].'' Sections 1271(a) and (b) pertain to OSMRE's obligation to conduct oversight of State regulatory

programs and provide any necessary Federal enforcement. We implement the relevant statutory requirements of 30 U.S.C. 1271(a) and (b), discussed above, through the existing regulations at 30 CFR parts 842 and 733.

As mentioned above, immediately prior to the 2020 TDN Rule, the Federal regulations did not specify when OSMRE had ''reason to believe'' a violation exists. On one hand, the pre-2020 regulations at 30 CFR 842.11(b)(1)(i) (2019) referred to OSMRE having ''reason to believe on the basis of information available.'' On the other hand, § 842.11(b)(2) provided that OSMRE would have reason to believe ''if the facts alleged by the informant would, if true, constitute a . . . violation . . . .'' In the 2020 TDN Rule, we sought to remove any confusion by amending § 842.11(b)(1)(i) to refer to ''reason to believe on the basis of any information readily available [to an OSMRE authorized representative], from any source, including any information a citizen complainant or the relevant State regulatory authority submits . . . .'' For consistency, we also amended § 842.11(b)(2) to provide that OSMRE will have reason to believe ''a violation . . . exists if the facts that a complainant alleges, or facts that are otherwise known to the authorized representative, constitute simple and effective documentation of the alleged violation . . . .'' As noted above, and as will be discussed in more detail below, we propose to amend these sections to limit the sources of information that we will consider when we are determining whether we have reason to believe that a violation exists.

While the term ''permit defects'' has never appeared in the regulations, OSMRE, for most of its existence, has issued TDNs to State regulatory authorities for possible ''permit defects,'' that is, allegations that a State regulatory authority has issued a permit with a provision, or lack thereof, that is contrary to the approved State program. The 2020 TDN Rule did not squarely address this issue, but as noted above, the preamble to the 2020 TDN Rule explained that, under 30 U.S.C. 1271(a)(1), ''any person'' who can be in violation of SMCRA or a State regulatory program ''does not include a State regulatory authority, unless it is acting as a permit holder.'' 85 FR 75176. As such, we explained that a permit defect ''will typically be handled as a State regulatory program issue'' under 30 CFR part 733, rather than through the TDN process, ''unless there is an actual or imminent violation of the approved State program.'' *Id.*

This proposed rule would reinstate the practice of issuing TDNs to State regulatory authorities for permit defects. Although a TDN under 30 CFR part 842 would be issued for a permit defect, the proposed regulations would still allow OSMRE and the State regulatory authority to develop an action plan under 30 CFR part 733 to address a State regulatory program issue, and the development of that action plan could, in the appropriate circumstances, constitute ''good cause'' for not taking action in response to the TDN. Thus, this aspect of the proposed revisions to the Federal regulations would incorporate a part 733 action plan, which originates from a citizen complaint, into the TDN process.

Before the 2020 TDN Rule, under internal guidance, OSMRE used ''action plans'' to resolve State ''regulatory program problems.'' OSMRE has used action plans extensively and effectively to address a State regulatory authority's misapplication of its approved State regulatory program. In the 2020 TDN Rule, we incorporated the action plan concept into 30 CFR 733.12 for what we defined in the regulations at § 733.5 as a ''State regulatory program issue.'' In general, a State regulatory program issue, as we propose to amend the definition, is one that we identify during oversight of a State or Tribal regulatory program that may result from a regulatory authority's implementation, administration, enforcement, or maintenance of its State regulatory program. Under the 2020 TDN Rule at § 842.11(b)(1)(ii)(B)(*3*), ''appropriate action'' in response to a TDN could include ''OSMRE and the State regulatory authority immediately and jointly initiating steps to implement corrective action to resolve any issue that [OSMRE] identif[ies] as a State regulatory program issue, as defined in 30 CFR part 733.''

Under this proposed rule, entering into an action plan to address a State regulatory program issue would no longer constitute ''appropriate action'' under the TDN process. However, we propose that, if a possible violation is being addressed in an action plan, along with substantively similar possible violations, that fact would constitute ''good cause'' in response to the TDN. In this regard, OSMRE's treatment of a State regulatory program issue under an action plan would be part of the overall TDN process. (Action plans can be developed to address other aspects of a State regulatory program, such as staff funding, adequate access to public documents, and other similar programmatic issues that may not be part of the TDN process.)

Finally, the 2020 TDN Rule perpetuated the distinction between citizen complaints and citizen requests for Federal inspections. For example, under the existing regulations, the provisions for ''Federal inspections and monitoring'' in 30 CFR 842.11(b)(1) are often triggered by ''citizen complaints,'' yet § 842.12 pertains to ''Requests for Federal inspections.'' As mentioned above, we propose to eliminate any confusion by proposing, at 30 CFR 842.11(b)(2) and 842.12(a), that all citizen complaints would be considered requests for Federal inspections.

III. Section-by-Section Analysis

A. Overview

To increase efficiency and make it easier for citizens to report possible violations, we propose to simplify the processes for filing a citizen complaint and requesting a Federal inspection. Under this proposed rule at §§ 842.11(b)(2) and 842.12(a), all citizen complaints would be considered as requests for a Federal inspection. After reviewing our experience implementing the citizen complaint process under the 2020 TDN Rule, we are proposing to remove two burdensome and unnecessary provisions from the existing regulations at § 842.12(a): (1) the express requirement for a person requesting a Federal inspection to notify the State regulatory authority of the possible violation and (2) the requirement for a person requesting a Federal inspection to state the basis for their assertion that the State regulatory authority has not taken action with respect to the possible violation. The State regulatory authority is often best positioned to address citizen complaints in the first instance, but, for various reasons, some citizens do not, or will not, contact the State regulatory authority. Under this proposed rule, therefore, a citizen would not be required to notify the State regulatory authority. After receiving a citizen complaint, we would evaluate information from the complainant, information in our files, and publicly available electronic information to determine if we have reason to believe a violation exists.

Prior to the 2020 TDN Rule, we often automatically sent a TDN to the State regulatory authority upon receipt of information from a citizen alleging a violation and without undertaking a ''reason to believe'' analysis. Under this proposed rule, instead of simply forwarding a citizen complaint to the State regulatory authority as a TDN or considering ''readily available information'' under the existing

regulations at 30 CFR 842.11(b)(1)(i) and (b)(2), and 842.12(a), we propose to only issue a TDN to the State regulatory authority after we have undertaken a ''reason to believe'' analysis that considers only information received from a citizen complainant, information available in OSMRE's files at the time we receive the citizen complaint, and publicly available electronic information. This would allow the TDN process to proceed without any undue delays associated with outside research.

As explained above, we consider a TDN to be a communication mechanism between OSMRE and the State regulatory authority. A TDN that results from a citizen complaint is not itself a determination that there is a violation or that the State has failed to address a violation. Rather, consistent with the notion of State primacy, a TDN affords the State the first opportunity to address the underlying issue. A Federal inspection and possible Federal enforcement action occur only if a State regulatory authority fails to respond within ten days or submits a response that is arbitrary, capricious, or an abuse of discretion.

As mentioned above, we are proposing to restrict the sources of information that we review when determining whether we have reason to believe a violation exists to: information received from a citizen complainant, information in our files at the time that we are notified of the possible violation, and publicly available electronic information. The first source of information would include information in the citizen complaint and any other supporting information that the citizen chooses to provide. The second information source would encompass information available in our files at the time that we are notified of the possible violation or at the time that OSMRE receives a request for a Federal inspection. We propose to limit this category to information that we already have when we receive a citizen complaint or a request for a Federal inspection so that we will be able to act expeditiously and will not incur delay by engaging in a larger information gathering effort.

In the 2020 TDN Rule, we sought to place a temporal limitation on the data collection by indicating that the information must be ''readily available.'' Given our experience with that rule and after reexamination, we now conclude that ''readily available'' does not necessarily impose a time limit and could be interpreted to involve a larger information gathering than we envisioned, potentially including information that takes months to gather and analyze, and can unnecessarily delay a ''reason to believe'' determination. Thus, we are proposing to add a clear limitation so that the information that OSMRE will consider is contained in our files at the time that we are notified of a possible violation or receive a request for a Federal inspection.

Given the widespread public availability of electronic information via the internet or similar sources, however, we propose that we may also consider information from a third source: ''publicly available electronic information.'' This would include any and all data that is publicly available in an electronic format. For us to use information not already in our files when determining whether we have reason to believe a violation exists, the information would have to be in an electronic format and be ''publicly available.'' We propose to limit this information to electronic sources to avoid delays associated with trying to locate hard copy files. This information could include electronic permitting information that the relevant regulatory authority or governmental entity makes available to the public. Our goal with these proposed changes is to limit the sources of information that we would consider to ensure an expeditious ''reason to believe'' determination, and thus reduce the amount of time between when we become aware of a possible violation and when we inform the State regulatory authority of the possible violation.

In addition, treating a possible ''permit defect'' as we do any other possible violation and notifying the State regulatory authority through a TDN, rather than treating the issue, in the first instance, as a ''State regulatory program issue'' under 30 CFR 733.12, could save time and allow OSMRE and the State regulatory authorities to begin addressing possible violations more quickly.

Treating all types of possible violations the same would be more consistent with 30 U.S.C. 1271(a)(1), which provides that whenever the Secretary, ''on the basis of any information available to him, including receipt of information from any person,'' has ''reason to believe that any person is in *violation of any requirement of [SMCRA]* or any permit condition required by [SMCRA],'' the Secretary must notify the State regulatory authority. (Emphasis added.) In the preamble to the 2020 TDN Rule, we explained that, under 30 U.S.C. 1271(a)(1), ''any person'' who can be in violation of SMCRA or a State regulatory program ''does not include a State regulatory authority, unless it is acting as a permit holder.'' 85 FR 75176; *see also id.* at 75179. The better reading of that statutory provision is one we have held throughout most of OSMRE's history: that we must issue a TDN when we have reason to believe that *any person,* including a State regulatory authority, is in *violation of any requirement of SMCRA.* If a State has issued a permit that would allow coal mining to occur in a manner that is inconsistent with SMCRA or the applicable State regulatory program, or a permit that does not comply with all requirements to obtain a permit, it makes little sense for us to wait for the permittee or operator to act in accordance with that defective permit before we can issue a TDN. Moreover, States would most likely become aware of a ''permit defect'' issue sooner under the proposed rule and therefore have an earlier opportunity to evaluate and address the issue. As always, if a State disagrees that there is a violation, it can respond to the TDN by explaining its position that a possible violation does not exist under the State regulatory program. 30 CFR 842.11(b)(1)(ii)(B)(*4*)(*i*). We will honor a State's response to the TDN unless we conclude that the action or response is arbitrary, capricious, or an abuse of discretion. *Id.* § 842.11(b)(1)(ii)(B)(*2*).

Within the cooperative federalism framework, citizens have a voice in the form of a citizen complaint. As mentioned, in this proposed rule, we are also proposing to define ''citizen complaint,'' at proposed 30 CFR 842.5, to remove any confusion and clarify that the purpose of a citizen complaint, in the TDN context, is for citizens to inform OSMRE of a possible violation or issue with a State regulatory program. We are proposing to define ''citizen complaint'' as ''any information received from any person notifying the Office of Surface Mining Reclamation and Enforcement (OSMRE) of a possible violation of the Act, this chapter, the applicable State regulatory program, or any condition of a permit or an exploration approval.'' Defining the phrase ''citizen complaint'' would remove any inconsistencies associated with the phrase or related processes.

In addition, in this proposed rule, we intend to remove any confusion concerning the difference between ''citizen complaints'' under § 842.11 and ''requests for Federal inspections'' under existing § 842.12(a). A citizen complaint may or may not expressly request a Federal inspection, and the citizen complaint may result in the issuance of a TDN if we form the requisite reason to believe and there is

no imminent harm. Likewise, ''[r]equests for Federal inspections,'' under 30 CFR 842.12(a), may also result in the issuance of a TDN in non-imminent harm situations.

Under this proposed rule, we also propose to avoid any misunderstanding by removing the requirement for a citizen to contact the applicable State regulatory authority before requesting a Federal inspection. The SMCRA provision governing inspections and monitoring, at 30 U.S.C. 1267(h)(1), states that any person adversely affected by a surface mining operation may notify OSMRE ''in writing, of any violation of [SMCRA] which he has reason to believe exists at the surface mining site.'' This statutory provision does not require a citizen to notify the State regulatory authority when informing us of a possible violation. Likewise, the TDN process at 30 U.S.C. 1271(a)(1) does not require a citizen to notify the State regulatory authority when bringing a possible violation to our attention.

While we have discretion to require citizens to notify the State regulatory authority whether they are filing a citizen complaint under § 842.11 or requesting a Federal inspection under § 842.12, we have decided, consistent with our objective to remove unnecessary hurdles for citizen complainants, to propose to remove the requirement from § 842.12(a) and clarify that there is not a similar requirement for § 842.11(b).

In addition, to improve clarity, we propose to add language in both § 842.11(b)(2) and § 842.12(a) stating that all citizen complaints will also be considered as requests for Federal inspections. Accordingly, if a Federal inspection occurs as a result of any information received from a citizen complainant, the citizen would be afforded the right to accompany the Federal inspector on the inspection.

As we noted in the preamble to the 2020 TDN Rule, there has never been a stringent time frame for determining whether we have reason to believe a violation exists. 85 FR 75158. Notably, neither SMCRA nor the pre-2020 TDN rules contain such a time frame. While SMCRA gives us discretion to determine if and when we have the requisite reason to believe, we intend to make such determinations quickly after receiving a citizen complaint. Our proposed regulatory revision reflects that intention by limiting the sources of information that we will consider when evaluating whether we have reason to believe a violation exists.

In addition, SMCRA and our longstanding TDN regulations provide that a State regulatory authority has ten days to respond to a TDN indicating that it has taken appropriate action to cause the possible violation to be corrected or that it has good cause for not taking action. 30 U.S.C. 1271(a)(1); 30 CFR 842.11(b)(1)(ii)(B)(*1*). These provisions do not require the underlying issue to be fully resolved within ten days. In some instances, in response to a TDN, a State regulatory authority will be able to demonstrate that the possible violation has already been corrected or that the allegation does not amount to a violation of the State regulatory program. However, in many instances, the ultimate resolution of the issue or abatement action occurs after we receive a State's response to a TDN. Whether we agree with the State's proposed action to resolve an issue or disagree and conduct a Federal inspection, ultimate resolution of the underlying issue often occurs well after the initial ten-day period. Many times, the final resolution of an issue occurs days or months after the initial citizen complaint, and, in some circumstances, resolution can take more than a year.

Nonetheless, we propose several steps to reduce the time between the identification of a State regulatory program issue and final resolution of that issue. Under the 2020 TDN Rule, 30 CFR part 733 corrective actions associated with State regulatory program issues may constitute ''appropriate action'' in response to a TDN. 30 CFR 842.11(b)(1)(ii)(B)(*3*). However, the existing regulation provides that we will only develop and institute an action plan if we believe the State regulatory program issue will take longer than 180 days to resolve or if the State regulatory program issue is likely to result in a violation. 30 CFR 733.12(b). In addition, existing § 733.12(b) does not require any specific interim measures between identification of the State regulatory program issue and institution of a corrective action plan; the existing regulations say only that we ''may employ any number of compliance strategies to ensure that the State regulatory authority corrects a State regulatory program issue in a timely and effective manner.'' *Id.* Thus, a possible violation, if addressed under existing 30 CFR part 733 as a State regulatory program issue, could exist for a long period of time before resolution.

To hasten that process, we propose to amend 30 CFR 842.11 and 733.12 to address the possibility of delay. First, under proposed 30 CFR 842.11(b)(1)(ii)(B)(*3*), corrective actions under 30 CFR part 733 could no longer constitute appropriate action in response to a TDN. Second, at 30 CFR 733.12(b), we propose to remove the 180-day language pertaining to development of an action plan. Instead, for each State regulatory program issue, we, in consultation with the applicable State regulatory authority, would ''develop and approve an action plan within 60 days of identification of a State regulatory program issue.'' When crafting a corrective action plan, the proposed rule envisions a collaborative process between OSMRE and the State regulatory authority. In addition, at § 733.12(b), we also propose that, ''[w]ithin 10 business days of OSMRE's determination that a State regulatory program issue exists, OSMRE and the State regulatory authority may identify interim remedial measures that may abate the existing condition or issue.'' Amending these provisions would shorten the time between identification of a State regulatory program issue and the development of measures to address the issue. Thus, the proposed rule would retain the corrective action plan concept but add timeframes to ensure that action is taken expeditiously.

Further, for State regulatory program issues, § 733.12(b)(1) of the proposed rule would allow one calendar year from receipt of an action plan for the State regulatory authority to complete the identified actions in the action plan. We recognize that final resolution of an issue may not occur within the allotted one year, but, under the proposed regulations, the State regulatory authority would need to complete the identified actions within one year. For example, a State regulatory program issue may require an amendment of the approved State regulatory program and gaining approval of a State program amendment may require more than a year. In such circumstances, the action identified in the action plan may be for the State regulatory authority to prepare and submit the proposed State program amendment within the allotted timeframe, with a recognition that there could be additional required State approvals, and that, ultimately, we would need to approve the State program amendment. Thus, when developing a corrective action plan, care must be given to identify required actions and what constitutes ''completion'' of the action plan. Completion criteria would need to set forth actions and milestones that would be achievable within 365 days. The goal is to keep violations from going unabated, minimize on-the-ground impacts, and prevent off-site impacts.

Under the existing regulations at 30 CFR 842.11(b)(1)(ii)(B)(*4*)(*ii*), ''good cause'' for a State regulatory authority not to take ''appropriate action'' in

response to a TDN includes the State's initiation of ''an investigation into a possible violation'' and its resulting determination that it ''requires a reasonable, specified additional amount of time to determine whether a violation exists.'' We propose to amend this provision by specifying the time within which the State regulatory authority must complete its investigation. The proposed rule would provide that ''[t]he State regulatory authority may request up to 30 additional days to complete its investigation of the issue,'' and that, ''in complex situations, the State regulatory authority may request up to an additional 60 days to complete the investigation.''

We are proposing this limit so that a State regulatory authority will not postpone abatement measures while it is engaging in an open-ended investigation of whether a violation exists. In our experience, determining if a violation exists is not an exhaustive or indeterminate process. Under this proposed rule, that process would end in 30 days for most situations and 60 additional days when complex situations arise. The proposed rule would cap the maximum amount of time at 90 days from when we determine that the State regulatory authority has satisfied the criteria for good cause. In addition, when a State regulatory authority is requesting more time to address an identified issue, we would require the State regulatory authority to provide a reasoned justification for the time extension. Under the proposed rule, when we evaluate a State regulatory authority's request for additional time, we would have ''discretion to approve the requested time extension or establish the length of time, up to 90 days, that the State regulatory authority has to complete its investigation.'' This is intended to facilitate faster resolution of identified issues.

At proposed § 842.11(b)(1)(ii)(B)(*1*) and (b)(1)(ii)(B)(4)(*iii*), we propose similar revisions to reduce the burden on State regulatory authorities and OSMRE. In the first provision, (§ 842.11(b)(1)(ii)(B)(*1*)), we propose that ''[w]here appropriate, OSMRE may issue a single ten-day notice for substantively similar possible violations found on two or more permits involving a single permittee, including two or more substantively similar possible violations identified in one or more citizen complaints.'' In the second provision, (§ 842.11(b)(1)(ii)(B)(4)(*iii*)), we propose that good cause in response to a TDN includes OSMRE ''identif[ying] substantively similar possible violations on separate permits and consider[ing] the possible violations as a single State regulatory program issue . . . .'' By the phrase ''substantively similar possible violations,'' we mean issues or possible violations that are similar, or even identical, in that they are subject to the same statutory or regulatory provisions and have a common theme. This provision would allow similar possible violations to be addressed under a single corrective action plan. Issuing separate TDNs on substantively similar possible violations involving the same permittee is redundant and not an efficient use of our or State resources when the underlying issue can be more efficiently addressed simultaneously. Moreover, occurrence of substantively similar issues on separate permits could indicate a systemic issue in the implementation of a State regulatory authority's program, which would be more efficiently addressed as a State regulatory program issue and resolved through implementation of an action plan. It is logical to combine substantively similar issues and possible violations into a single plan of action and address all the issues as a group rather than through a series of individual actions.

On a related topic, the 2020 TDN Rule defined ''State regulatory program issue'' as an issue that could result in a State regulatory authority not effectively implementing, administering, enforcing, or maintaining its State regulatory program, including issues related to the requirement that a State regulatory authority must not approve a permit unless it finds that the application is accurate and complete and complies with all requirements of the Act and the State regulatory program. 30 CFR 733.5. This definition and associated provisions were intended to address issues with a State regulatory authority's implementation of its approved SMCRA program. In the TDN context, these issues often arise as ''permit defects'' that are identified in a citizen complaint. As explained elsewhere, we generally consider a permit defect to be a deficiency in a permit-related action taken by a State regulatory authority, such as issuance of a permit with a provision, or lack thereof, that is contrary to the approved State program. In colloquial terms, a permit defect results in a ''defective permit.''

In the preamble to the 2020 TDN Rule, we explained that a permit defect ''will typically be handled as a State regulatory program issue [rather than through issuance of a TDN], unless there is an actual or imminent violation of the approved State program.'' 85 FR 75176. Under this proposed rule, we would once again issue TDNs for permit defects, as possible violations, when we have the requisite reason to believe a violation exists. An alleged permit defect could be grouped with substantively similar possible violations and addressed as a single State regulatory program issue. Addressing the issue as a State regulatory program issue would constitute ''good cause'' for not taking appropriate action within ten days under the TDN process.

In this proposed rule, we considered proposing a definition of ''permit defect,'' but ultimately determined that it is unnecessary to do so. In general, SMCRA states that we issue a TDN when we have ''reason to believe that any person is in violation of any requirement of [SMCRA] or any permit condition required by [SMCRA].'' 30 U.S.C. 1271(a)(1). A permit defect constitutes a ''violation'' under the common understanding of that term. See Webster's New International Dictionary 2846 (2d ed. 1959). Although the State regulatory authority would not itself be mining in violation of SMCRA or the approved State program, it has issued a State permit or it would allow a permittee to mine in a manner that is not in compliance with the approved State program or SMCRA. In appropriate circumstances, we would issue a TDN even if mining has not started.

As mentioned, under the 2020 TDN Rule, we indicated that ''a so-called 'permit defect' will typically be handled as a State regulatory program issue [under 30 CFR part 733], unless there is an actual or imminent violation of the approved State program.'' 85 FR 75176. As such, the existing regulations provide that nothing in 30 CFR 773.12(d) ''prevents a State regulatory authority from taking direct enforcement action in accordance with its State regulatory program, or OSMRE from taking appropriate oversight enforcement action'' if ''a previously identified State regulatory program issue results in or may imminently result in a violation of the approved State program.'' We had initially proposed that we and the State regulatory authority could take appropriate enforcement actions when ''a previously identified State regulatory program issue results in or may imminently result in an *on-the-ground violation.*'' 85 FR 28916–917 (emphasis added). In the final rule, we substituted ''a violation of the approved State program'' for ''an on-the-ground violation.'' *See, e.g.,* 85 FR 75152, 75174. However, in the preamble to the final rule, we also explained that: ''In OSMRE's experience, a violation of the approved State program often manifests itself as an on-the-ground impact, but

may also manifest by other means, such as a failure to submit a required certification or monitoring report.'' 85 FR 75170; *see also* 85 FR 75174 (''OSMRE recognizes that these violations often manifest as an on-the-ground impact, but OSMRE also recognizes that these violations may manifest by other means.'').

This proposed rule would treat all violations the same, whether they are on-the-ground or otherwise. Thus, under 30 CFR 842.11, we would issue a TDN for any possible violation after forming the requisite reason to believe a violation exists. Proposed 30 CFR 733.12(d) would remove the reference to imminent violations, so that we need not wait for an imminent or actual on-the-ground violation before issuing a TDN. For example, we would be able to issue TDNs for, *e.g.,* failure to submit a required certification or monitoring report after forming reason to believe a violation exists. Our proposal to once again be able to issue TDNs for all violations, including those committed by a permittee and permit defects, would comport more closely with SMCRA's language in 30 U.S.C. 1271(a)(1) by treating all violations the same in the first instance and removing any concern that we have created two classes of violations: one that is subject to the TDN process and another that is not.

The term ''violation'' is defined at 30 CFR 701.5. That definition only applies to ''the permit application information or permit eligibility requirements of sections 507 and 510(c) of [SMCRA] and related regulations'' and thus is not applicable to this proposed rule, which primarily implements section 521 of SMCRA, 30 U.S.C. 1271. Nonetheless, that definition provides a useful comparison. The definition of ''violation'' at 701.5, in the SMCRA context, provides that a violation includes a noncompliance for which OSMRE or a State regulatory authority has provided a notice of violation; a cessation order; a final order, bill, or demand letter pertaining to a delinquent civil penalty; a bill or demand letter pertaining to delinquent reclamation fees; or a notice of bond forfeiture. In the TDN context, a violation could be any ''noncompliance'' for which a State regulatory authority would, or could, issue a notice of violation, cessation order, final order, bill, demand letter, or notice of bond forfeiture. The TDN process is designed to trigger the State regulatory authority to take appropriate action where there is a violation.

Moreover, State programs must be no less stringent than SMCRA and no less effective than the Federal regulations in meeting SMCRA's requirements. *See* 30 CFR 732.15(a) (a State program must be ''in accordance with'' SMCRA and ''consistent with'' the Federal implementing regulations); 30 CFR 730.5 (defining ''[c]onsistent with'' and ''in accordance with''). Under 30 CFR 773.7(a) and State counterparts to that provision, a regulatory authority is required to review permit applications and related information and issue a written decision either granting, requiring modification of, or denying the application. A permit applicant has ''the burden of establishing that [the] application is in compliance with all the requirements of the regulatory program.'' *Id.* at § 773.7(b). Similarly, under 30 CFR 773.15 and State program counterparts, a permit application must affirmatively demonstrate and the regulatory authority must make a written finding that the ''application is accurate and complete and *the applicant has complied with all requirements of [SMCRA]* and the regulatory program.'' 30 CFR 773.15(a) (emphasis added).

In sum, an approved permit that is inconsistent with the approved State program, and by extension the minimum Federal permit application standards at 30 CFR parts 777 through 785, is tantamount to the applicant's noncompliance with the requirements of SMCRA and the State regulatory program. Therefore, such noncompliances are violations that are subject to the TDN process. In some instances, an applicant may provide incomplete or inaccurate information in its permit application, which may lead the State regulatory authority to issue a defective permit. In other circumstances, an applicant may believe it has complied with all of the permitting requirements although it has not, and the State regulatory authority may issue a permit that is not in compliance with the approved program or SMCRA. In such a situation, it makes little sense to wait for the permittee to begin mining activities in accordance with the defective permit before we issue a TDN. Thus, under this proposed rule, we would issue a TDN to a State regulatory authority whenever we have reason to believe that there is a violation, including violations related to defective permits.

In simple terms, an approved permit should not contain any inconsistency with an approved State program, SMCRA, or the Federal regulations. Issuance of a TDN, in appropriate circumstances, would start the process of rectifying the situation. Under this proposed rule, substantively similar possible permit defects could indicate systemic issues that would be best addressed as a single State regulatory program issue under 30 CFR part 733, with a corresponding action plan, which could establish good cause in response to a TDN.

B. Proposed 30 CFR 842.5—Definitions

The proposed rule would create a new definitions section at 30 CFR 842.5 that would include definitions for the terms ''citizen complaint'' and ''ten-day notice.'' Both terms have been used for years and were referenced throughout the preamble of the 2020 TDN Rule but have not been defined in the Federal regulations. To remove any uncertainty regarding the meaning and usage of these terms, and to promote consistency and clarity, we propose to define these terms.

In the definition of ''citizen complaint,'' we propose to include the word ''possible'' to modify ''violation,'' rather than ''alleged'' or something similar, to indicate that not all citizen complaints will contain an affirmative allegation of a violation, but the citizen complaint may nonetheless, in substance, identify a possible violation. Including ''possible violation'' in the proposed definition of ''citizen complaint'' would recognize that a citizen may provide information that falls short of a formal allegation but may nonetheless give us reason to believe a violation exists. A more formal allegation would also qualify as a ''possible violation'' under the proposed definition of citizen complaint. Thus, in this preamble, unless context dictates otherwise, references to alleged violations are references to possible violations.

As we explained in a 1982 final rule, we referred to ''possible'' violations at 30 CFR 842.11(b)(1)(ii)(B) because we may form ''reason to believe'' that a violation exists even when there is not an affirmative allegation. 47 FR 35627 (Aug. 16, 1982). Citizens may not be familiar with the intricacies of SMCRA, the Federal regulations, or the relevant State regulatory program. Thus, we propose that a citizen complaint need only identify a possible violation, rather than identifying an alleged violation with particularity, although citizens are encouraged to provide as much legal and factual information as possible in order to assist us in determining whether we have reason to believe a violation exists.

As proposed, information in a ''citizen complaint'' would need to be conveyed to us ''in writing (or orally, followed up in writing).'' Written information could be contained in a

traditional letter, electronic mail, or other electronic means.

Next, as explained above, we are proposing to define the term ''ten-day notice.''

Defining ''ten-day notice'' would provide a uniform understanding of the term. In our experience, many State regulatory authorities believe a TDN is equivalent to an ''enforcement action'' or is otherwise a criticism of the State's enforcement of SMCRA. As a result, some State regulatory authorities have a negative view of our issuance of TDNs. As previously stated, when a TDN results from a citizen complaint (rather than a Federal oversight inspection), the TDN is merely a communication mechanism that we use to notify State regulatory authorities of possible violations of the relevant State regulatory program. A TDN is not an ''enforcement action'' against the State, even though the concept is contained in the enforcement section of SMCRA. 30 U.S.C. 1271. The current State regulatory authorities obtained primacy many years ago and have since been implementing SMCRA via their approved State regulatory programs. In SMCRA, Congress envisioned States as the primary enforcers of SMCRA, with Federal oversight. In this regard, SMCRA provides a cooperative federalism model, with TDNs part of that model. A TDN that results from a citizen complaint simply represents OSMRE's statutory obligation to inform the primary regulators of possible violations of SMCRA or an approved State program. After OSMRE notifies the State regulatory authority, the State might enforce SMCRA against a permittee or operator, or, in rare cases, if we disagree with the State, we might take enforcement action. The proposed definition of ''ten-day notice'' would capture the understanding that a TDN is a communication mechanism that we use to notify a State regulatory authority under §§ 842.11(b)(1)(ii)(B)(*1*) and 843.12(a)(2) whenever an ''OSMRE authorized representative has reason to believe that any permittee and/or operator is in violation'' of the specified provisions ''or when, on the basis of a Federal inspection, OSMRE determines that a person is in violation'' of the specified provisions ''and OSMRE has not issued a previous ten-day notice for the same violation.''

We propose to include in the definition of ''ten-day notice'' a reference to ''this chapter.'' That reference is included in existing § 842.11(b)(1)(i), and, in this context, a violation of the regulations implementing SMCRA is within the scope of the proposed definition of ''ten-day notice.''

Finally, the proposed definition specifies that TDNs are ''used in non-imminent harm situations'' because SMCRA, at 30 U.S.C. 1271(a)(1), specifies that ''the ten-day notification period shall be waived when the person informing the Secretary provides adequate proof that an imminent danger of significant environmental harm exists and that the State has failed to take appropriate action.'' Thus, when we receive adequate proof of an imminent harm and the State regulatory authority has failed to take appropriate action, we do not issue a TDN; rather, we proceed directly to a Federal inspection. 30 CFR 842.11(b)(1)(ii)(C).

C. Proposed 30 CFR 842.11(b)(1)(i)

We propose a change to 30 CFR 842.11(b)(1)(i) that would limit the sources of information that we review when determining whether we have reason to believe a violation exists. In the 2020 TDN Rule, we explicitly expanded the scope of information that we could use to determine whether we have reason to believe to include ''any information readily available to [OSMRE], from any source, including any information a citizen complainant or the relevant State regulatory authority submits . . . .'' 30 CFR 842.11(b)(1)(i); *see also id.* §§ 842.11(b)(2) and 842.12(a) (requests for Federal inspections). In the preamble to the 2020 TDN Rule, we explained that ''[a]ny readily available information includes information from any person, including the permittee, and is not limited to information that OSMRE receives from a citizen or State regulatory authority.'' 85 FR 75162. The change was intended to enable us to make a better-informed decision about whether we have reason to believe a violation exists.

Our experience implementing the 2020 TDN led us to reexamine it and SMCRA's statutory underpinnings. The reference to ''receipt of information from *any person*'' (emphasis added) in SMCRA section 1271(a) is best read as referring to ''any person'' who has information about the *existence of a possible violation,* rather than information from other sources that could *disprove the existence of a violation.* While in some cases it might be more efficient to consider information from the State regulatory authority up front, we believe that SMCRA envisions a back-and-forth process with the State regulatory authority during the ten-day period *after* issuance of a TDN. In other words, after we issue a TDN, the State regulatory authority can respond by referring to any information in its possession about the possible violation. We believe that this approach—limiting the sources of information that we review to determine whether we have reason to believe a violation exists—better aligns with SMCRA and would allow us to make a quicker determination and allow any violations to be corrected more quickly. Moreover, using information we have on hand or that is available to the public electronically in addition to information contained in a citizen complaint, will still allow us to make a ''reason to believe'' determination without excessive delay in issuing a TDN in appropriate circumstances. This change would make the process more efficient by reducing the amount of time between receiving information about a possible violation and issuing a TDN to the State under the appropriate circumstances, which would prompt action to correct violations as soon as possible.

To accomplish the changes discussed above, we are proposing to amend the text of § 842.11(b)(1)(i), in pertinent part, to state that the authorized representative determines whether there is ''reason to believe'' that there is a violation based on ''information *received* from a citizen complainant, *information available in OSMRE files at the time that OSMRE is notified of the possible violation* (other than information resulting from a previous Federal inspection), *and publicly available electronic information.*'' In the same provision of the existing regulations, we are proposing to remove the language that would allow us to determine whether we have reason to believe on the basis of ''any'' information ''readily available,'' ''from any source,'' ''including any information . . . the relevant State regulatory authority submits.'' In addition to the deletions noted above, we also propose to make minor, non-substantive changes for readability.

This change would also limit the sources of information we could consider when determining whether to conduct a Federal inspection in areas where OSMRE is the regulatory authority (*i.e.,* States and Tribes without primacy and Federal coal in areas without a State/Federal cooperative agreement). Under the proposed rule, we would consider information received from a citizen complainant, information available in our files at the time that we are notified of the possible violation, and any publicly available electronic information when determining whether we have reason to believe a violation exists in an area where OSMRE is the regulatory authority. Under existing 30 CFR 842.11(b)(1)(ii)(A), if we conclude

we have reason to believe a violation exists, we will conduct a Federal inspection.

D. Proposed 30 CFR 842.11(b)(1)(ii)

We propose several changes to the existing regulations at 30 CFR 842.11(b)(1)(ii). At 30 CFR 842.11(b)(1)(ii)(B)(*1*), we are proposing to add a new sentence at the end of the existing provision, which would read: ''Where appropriate, OSMRE may issue a single ten-day notice for substantively similar possible violations found on two or more permits involving a single permittee, including two or more substantively similar possible violations identified in one or more citizen complaints.'' This would enhance administrative efficiency by allowing us to combine substantively similar possible violations by the same permittee involving more than one permit into a single TDN when we determine that doing so is the best course of action to resolve the larger issue expeditiously.

We propose this change for two main reasons: first, to prevent multiple, parallel Federal actions on substantively similar possible violations or citizen complaints, and second, to more efficiently resolve the possible violations. Addressing a single underlying issue on several permits or citizen complaints simultaneously would lead to more expeditious resolution of the underlying issue. In our experience, each individual TDN requires OSMRE and the State regulatory authority to commit resources to resolve the matter. Parallel actions can be inefficient and may lead to actions that are not fully consistent. Combining substantively similar possible violations into a single TDN would remove these inefficiencies and potential inconsistencies, allowing for quicker resolution of the possible violations. In sum, this change would allow us and the State regulatory authority to more efficiently use our limited resources and personnel to resolve underlying issues more quickly.

In proposed § 842.11(b)(1)(ii)(B)(*3*), we would remove the second sentence in the existing provision, which allowed creation and implementation of a corrective action plan under 30 CFR part 733 to constitute ''appropriate action'' in response to a TDN. Pursuing an action plan for a State regulatory program issue under 30 CFR part 733 would no longer constitute ''appropriate action.'' However, as discussed in the following paragraphs, we are proposing that an action plan could constitute ''good cause'' in certain situations for not taking action in response to a TDN. We are also proposing a non-substantive change to the first sentence of the existing section: we propose to add ''regulatory'' between ''State'' and ''program'' so the reference would be to ''State regulatory program.''

Inclusion of an action plan as an appropriate action under 30 CFR 842.11(b)(1)(ii)(B)(*3*) is not fully consistent with SMCRA section 521(a)(1), 30 U.S.C. 1271(a)(1). The statute states that ''appropriate action'' is an action taken by the State regulatory authority within ten days to ''cause said violation to be corrected . . . .'' Developing an action plan, as envisioned in the 2020 rule, generally means that the State regulatory authority cannot cause the violation to be corrected within ten days of receiving a TDN; rather, OSMRE and the State can initiate the action plan process in that ten-day window. Correction of the violation would come later. Therefore, after further review, we find that the action plan process would be better incorporated into the ''good cause'' exception for not taking appropriate action under 30 U.S.C. 1271(a)(1). This proposed change would make the regulations adhere more closely to the statutory text.

As explained above, this proposed rule would provide for the issuance of TDNs for permit defects. Hence, those types of possible violations would no longer automatically be handled under 30 CFR part 733. Instead, we would issue TDNs for any possible violations, including permit defects, when we form the requisite reason to believe a violation exists, and entering into an action plan under part 733 would no longer constitute appropriate action in response to a TDN. When implemented appropriately, however, an action plan could lead to correction of underlying violations. Thus, in appropriate circumstances, an action plan could constitute ''good cause'' for not taking action within ten days of a TDN. In sum, we believe action plans are an important oversight tool to correct State regulatory program issues, but they do not demonstrate appropriate action in response to a TDN.

This proposed rule would also change the examples of State regulatory authority responses to a TDN that may constitute ''good cause'' under 30 CFR 842.11(b)(1)(ii)(B)(*4*). We propose to add a new paragraph (b)(1)(ii)(B)(*4*)(*iii*), which would result in redesignations of existing paragraphs (b)(1)(ii)(B)(*4*)(*iii*) through (*v*) as paragraphs (b)(1)(ii)(B)(*4*)(*iv*) through (*vi*).

Existing § 842.11(b)(1)(ii)(B)(*4*)(*ii*) recognizes that State regulatory authorities are not always able to determine whether a possible violation exists within ten days, especially in complex circumstances. Some circumstances require complex technical and/or legal analysis to determine if there is actually a violation. For example, issues relating to property rights and right of entry may require legal review and analysis. Similarly, possible violations related to groundwater well contamination may require more than ten days to collect water samples, receive certified laboratory analyses, and develop technical expert interpretation of data to determine the possible origin of any contamination. In appropriate circumstances, State regulatory authorities have long been able to show good cause by demonstrating that they require additional time to determine whether a violation exists.

Under the proposed rule, while State regulatory authorities could still request extensions of time to respond to a TDN, we are proposing to limit the length of extensions. In § 842.11(b)(1)(ii)(B)(*4*)(*ii*), we propose to remove ''as a result'' from the first sentence as superfluous and unnecessary. In the same sentence, we propose to remove ''reasonable, specified'' as a modifier for the ''additional amount of time'' that a State regulatory authority can request to respond to a TDN. This language would no longer be necessary because we are proposing specific extension limits. The next sentence would be new and would read: ''The State regulatory authority may request up to 30 additional days to complete its investigation of the issue; in complex situations, the State regulatory authority may request up to an additional 60 days to complete the investigation.'' This new provision would be consistent with our view that, when extenuating circumstances are involved, a State regulatory authority should generally be able determine if a violation exists within 30 days. The provision would also recognize the need for longer time frames in complex situations and, under this proposed rule, we would be able to approve up to an additional 60 days.

The next sentence of the proposed rule would provide: ''In all circumstances, an extension request must be supported by an explanation of the need for, and the measures being undertaken that justify, an extension, along with any relevant documentation.'' While this requirement is implied under the existing regulations, we are proposing to make the requirement explicit. The following sentence would amend the existing second sentence of the provision: ''The authorized

representative has discretion to approve the requested time extension or establish the length of time that the State regulatory authority has to complete its investigation.'' We are proposing to delete the introductory clause of the existing sentence that states: ''When analyzing the State regulatory authority's response for good cause, ...'' We are proposing this non-substantive change because the existing language is unnecessary. The remaining changes to this sentence would also be non-substantive. Under this provision, the authorized representative would still have discretion to establish the length of an extension, but, under the following sentence, which would be new, any extension would be capped at 90 days. The proposed provision would set a limit to ensure that all TDNs are addressed expeditiously. Thus, under this proposed revision, we could not grant a State regulatory authority an extension of more than 90 days total to determine if a violation exists. In our experience implementing SMCRA for more than 40 years, we believe a State regulatory authority would not need more than 90 days to determine if there is a violation of SMCRA, the Federal regulations, the relevant State regulatory program, or an approved permit. If a State regulatory authority does not respond by the end of an approved extension period, we will order an immediate Federal inspection and take any appropriate enforcement action. In the last sentence of the existing provision, for grammatical reasons, we are proposing to add a comma between ''response'' and ''including.''

Finally, as discussed above, we propose to add a new paragraph (b)(1)(ii)(B)(*4*)(*iii*), which would incorporate the action plan process as a new example of what could constitute good cause for not taking appropriate action within ten days in response to a TDN. As explained above, we propose this new provision to create efficiencies by treating substantively similar possible violations under the same State regulatory program issue, which would allow similar possible violations to be addressed under a single action plan. As stated, action plans serve an important role as an oversight tool to ensure correction of State regulatory program issues, and this provision would promote uniform and consistent resolution of similar issues.

E. Proposed 30 CFR 842.11(b)(2)

There are several proposed changes to the existing regulations at 30 CFR 842.11(b)(2) that would align the section with the changes we propose at § 842.11(b)(1)(i) regarding the sources of information we will consider when making a reason to believe determination.

As explained above, we do not think it is necessary to wait for information from the State regulatory authority when determining whether we have reason to believe a violation exists for TDN purposes. As in § 842.11(b)(1)(i), we propose to limit the information that we consider to information received from a citizen complainant, information available in OSMRE's files at the time that OSMRE is notified of the possible violation, and publicly available electronic information.

In addition, instead of stating that we have reason to believe a violation exists if the facts available to an authorized representative ''constitute simple and effective documentation of the alleged violation, condition, or practice,'' the proposed rule would state that we have reason to believe if the facts ''support the existence of a possible violation, condition, or practice.'' The existing language is confusing. For example, although the first sentence of the existing provision speaks to ''facts that a complainant alleges,'' the phrase ''simple and effective documentation of the alleged violation'' implies that a citizen complainant must provide some form of ''documentation'' rather than only a written statement. However, SMCRA at 30 U.S.C. 1271(a)(1) establishes that we can form ''reason to believe'' on the basis of any ''information,'' a lower threshold that need not depend on supporting documentation. By requiring information to ''support'' the existence of a possible violation, the proposed language would strike a balance between a citizen complainant providing minimal information about the existence of a possible violation and supplying enough information to support ''reason to believe'' a violation exists. It is in all parties' best interest for a citizen to provide as much information as possible, including any documentation that the citizen may have, to assist us in narrowing our focus and more readily identifying possible violations.

Moreover, we continue to believe that citizen complaints require us to engage in some review and analysis rather than simply accepting the facts in a complaint as true and passing the complaint to a State regulatory authority as a TDN. As such, we are also proposing that, in addition to information from a citizen complainant, we could consider ''information available in OSMRE files at the time that OSMRE is notified of the possible violation, and publicly available electronic information.'' Practically speaking, this provision would limit us to considering information that already exists at the time we receive a citizen complaint and make clear that we do not conduct investigations or inspections before we determine whether we have the requisite reason to believe a violation exists to support issuance of a TDN. This approach better aligns with SMCRA's language and legislative history. It attempts to balance the benefit of citizen assistance in implementing SMCRA with our obligation and expertise to determine if we have reason to believe a violation exists.

We are also proposing to add two new sentences to § 842.11(b)(2) specifying that: ''All citizen complaints will be considered as requests for a Federal inspection under § 842.12. If the information supplied by the complainant results in a Federal inspection, the complainant will be offered the opportunity to accompany OSMRE on the Federal inspection.'' This would remove the requirement for a citizen to specifically request a Federal inspection, thus resolving any confusion about the processes associated with citizen complaints versus requests for Federal inspections. A citizen seeking help with a possible SMCRA problem may not appreciate the difference under the 2020 TDN Rule between requesting a Federal inspection and alerting OSMRE to a possible SMCRA problem. We propose to eliminate any hurdles for citizens and simplify the process by specifying that any citizen complaint will be considered as a request for a Federal inspection. This proposed change would make it easier for citizens to engage in the process, as SMCRA envisioned, by not requiring them to use specific terms of art to request a Federal inspection. This clarification is also consistent with the TDN process, which could ultimately result in a Federal inspection regardless of whether the citizen specifically requested that inspection. Finally, under the proposed rule, if information supplied by a citizen complainant results in a Federal inspection, even if the complainant did not specifically request a Federal inspection, the citizen complainant would be offered the opportunity to accompany us on the Federal inspection.

F. Proposed 30 CFR 842.12(a)

The final proposed change in part 842 would be to existing 30 CFR 842.12(a). Some of the proposed changes would track our proposed revisions to § 842.11

regarding the information sources we can consider when determining whether we have reason to believe a violation exists. We also propose to add new requirements to this section. The revisions would eliminate several barriers for citizens to file and obtain resolution of their complaints.

The first proposed change would harmonize this section with the changes we propose to § 842.11(b)(1)(i) and (b)(2). Specifically, the first sentence of existing § 842.12(a) refers to OSMRE forming ''reason to believe'' a violation exists based upon information from a person requesting a Federal inspection, ''along with any other readily available information.'' As explained previously regarding the proposed changes to § 842.11(b)(1)(i), we are proposing to remove the language that we consider ''readily available information,'' including information from the State regulatory authority, when we determine whether we have reason to believe a violation exists. We propose a similar change to § 842.12(a) so that we could consider the requester's signed, written statement ''along with any other information the complainant chooses to provide.'' Similar to the proposed revisions to § 842.11(b)(1)(i) and (b)(2), we are also proposing to add a new second sentence in this section that would read: ''In making this determination, the authorized representative will consider information from a citizen complainant, information available in OSMRE files at the time that OSMRE receives the request for a Federal inspection, and publicly available electronic information.'' These proposed changes would better comport with SMCRA. Further, including similar language in the three instances where this concept is addressed (30 CFR 842.11(b)(1)(i), (b)(2), and 842.12(a)) would clarify the Federal regulations.

Next, we propose to delete the second sentence of the existing section. Under the existing regulation, when requesting a Federal inspection, citizens must ''set forth the fact that the person has notified the State regulatory authority, if any, in writing, of the existence of the possible violation, condition, or practice, and the basis for the person's assertion that the State regulatory authority has not taken action with respect to the possible violation.'' We propose to delete this sentence because we believe it is a burdensome requirement and poses a significant hurdle for citizens reporting a possible violation. While we continue to believe that the State regulatory authority is often in the best position to address citizen complaints expeditiously in the first instance, many citizens prefer not to or will not contact the State regulatory authority. In these situations, we do not believe that there should be a mandatory obligation for a citizen to contact the State regulatory authority before we will act on information about a possible violation as contained in a citizen complaint or request for a Federal inspection. SMCRA at 30 U.S.C. 1271(a) allows citizens to bring their concerns about possible SMCRA violations to OSMRE and provides for those complaints to result in issuance of TDNs when we form the requisite ''reason to believe'' a violation exists. Section 1271(a)(1) does not require a citizen to notify the State regulatory authority about a possible violation. In fact, that section provides that ''[w]henever, on the basis of any information available to [us], including receipt of information from any person, [we have] reason to believe that any person is in violation of any requirement of [SMCRA] or any permit condition required by [SMCRA], *[we] shall notify the State regulatory authority,* if one exists, in the State in which such violation exists.'' (Emphasis added.) Under this proposed rule, if the citizen does not notify the State regulatory authority, and we form the requisite reason to believe, we would notify the State regulatory authority through issuance of a TDN, consistent with SMCRA. Furthermore, this process would be consistent with State primacy because the State has the first opportunity to address the situation, and we will accept a State's response to a TDN unless it is arbitrary, capricious, or an abuse of discretion.

We are also proposing to remove the requirement in the existing second sentence of the section for a person requesting a Federal inspection to set forth ''the basis for the person's assertion that the State regulatory authority has not taken action with respect to the possible violation.'' That requirement is overly burdensome and discourages citizens from notifying us of potential SMCRA violations. Implicit in a citizen's submission of a complaint or a request for a Federal inspection is their understanding that there is an issue or violation that the State regulatory authority has not addressed. It is unduly onerous to require a citizen to cite the basis of their allegation with the specificity expected of a SMCRA expert. Likewise, citizens will likely not be in a position to readily ascertain why the relevant State officials have not taken any action regarding the possible violation.

The third and final sentence of the existing section, regarding provision of the person's contact information, would remain essentially the same, with one minor, non-substantive edit: inclusion of the word ''also'' to indicate that it is in addition to previously stated requirements.

We propose to add two new sentences to the end of this section. Similar to the change we propose at § 842.11(b)(2), we propose that ''[a]ll citizen complaints under § 842.11(b) will be considered as requests for a Federal inspection,'' even if a citizen does not specifically request a Federal inspection. There is no legal or pragmatic reason for differentiating between citizen requests for a Federal inspection and citizen complaints that do not specifically request a Federal inspection. In our view, any citizen complaint that, in substance, alleges a violation of SMCRA is tantamount to a request for a Federal inspection because, as stated above, the TDN process could ultimately result in a Federal inspection. Likewise, when a citizen complainant provides adequate proof of an imminent danger of significant environmental harm, and the State has failed to take appropriate action, we would bypass the TDN process and proceed directly to a Federal inspection. Under this proposed rule, because all citizen complaints would be considered as requests for a Federal inspection, the citizen complainant would be afforded additional rights that, under the existing rule, only extend to people who have requested a Federal inspection. Those additional rights include certain confidentiality rights contained in existing § 842.12(b) and the right to seek review of an OSMRE decision not to conduct a Federal inspection or issue an enforcement action as set forth in existing § 842.15.

Finally, we propose to add a new last sentence to the section: ''If the information supplied by the complainant results in a Federal inspection, the complainant will be offered the opportunity to accompany OSMRE on the Federal inspection.'' Similar language is already included at existing § 842.12(c), but we are proposing to also include the language in § 842.12(a) to emphasize this important right, derived from 30 U.S.C. 1271(a)(1).

G. Overview of 30 CFR Part 733

The 2020 TDN Rule does not require us to issue a TDN for a ''permit defect.'' This proposed rule would require the issuance of a TDN when we have reason to believe any violation exists, including one in the form of a permit defect. We propose to clarify that we will issue a TDN in these circumstances upon forming the requisite reason to believe a violation exists. In the preamble to the

2020 TDN Rule, we explained that, under 30 U.S.C. 1271(a)(1), ''any person'' who can be in violation of SMCRA or a State regulatory program ''does not include a State regulatory authority, unless it is acting as a permit holder.'' 85 FR 75176. We further stated that a permit defect ''will typically be handled as a State regulatory program issue [rather than through issuance of a TDN], unless there is an actual or imminent violation of the approved State program.'' *Id.* Upon reexamination, we believe that a TDN is appropriate in these circumstances not because the State regulatory authority is in violation of SMCRA or its approved State program, but because it has issued a permit that is not in compliance with the approved State program or that would allow a permittee to mine in a manner that is not authorized by the State regulatory program. We would issue a TDN for possible on-the-ground violations as well as other possible violations of the approved State program, such as noncompliance with the State analogues to the permit application requirements at 30 CFR part 778. In this regard, we would issue TDNs in the appropriate circumstances even if mining under the permit has not started. Our proposed treatment of permit defects would restore our historical practice that was in place before the 2020 TDN Rule.

In the majority of cases, implementing the proposed rule would not result in issuance of a Federal notice of violation to, or any other Federal enforcement action against, a permittee resulting from a State regulatory authority's misapplication of its State regulatory program. State regulatory program issues would be addressed, in the first instance, between us and the relevant State regulatory authority. Upon resolution of the State regulatory program issue, the State regulatory authority may revise an approved permit or take similar action, and we assume that sufficient time would be allotted for the permittee to come into compliance. We believe that this mechanism—resolution of a State regulatory program issue through successful completion of an action plan, coupled with, for example, a required permit revision—should minimize the effects of the process on permittees. However, under the proposed revisions to existing § 733.12(d), even when OSMRE and a State regulatory authority are pursuing an action plan, the State could, in appropriate circumstances, take ''direct enforcement action in accordance with its State regulatory program,'' and we could take ''additional appropriate oversight enforcement action.''

H. Proposed Section 30 CFR 733.5—Definitions

As mentioned previously, if, under proposed § 842.11(b)(1)(ii)(B)(*4*)(*iii*), we were to identify ''substantively similar possible violations on separate permits and consider the possible violations as a single State regulatory program issue'' to be addressed through 30 CFR 733.12, that could constitute ''good cause'' for not taking action in response to a TDN. In these situations, the relevant provisions of 30 CFR part 733 would be part of the TDN process. Our first proposed revisions for part 733 concern the definitions of ''action plan'' and ''State regulatory program issue'' at existing 30 CFR 733.5. We propose non-substantive, clarifying changes to the definition of ''action plan'' at 30 CFR 733.5 to enhance its readability. The existing definition provides that an action plan ''means a detailed schedule . . . .'' We propose to change this to indicate that an action plan ''means a detailed plan . . . .'' Both the existing definition and our proposed revised definition would require us to prepare an action plan that would lead to resolution of the State regulatory program issue.

We also propose to revise the definition of ''State regulatory program issue.'' Some of the revisions would be for readability, but we also propose substantive changes to the definition. In the first sentence, we propose to change the language indicating that a State regulatory program issue ''*could result in* a State regulatory authority not effectively implementing, administering, enforcing, or maintaining all or any portion of its State regulatory program'' to ''*may result from* a State regulatory authority's implementation, administration, enforcement, or maintenance of all or any portion of its State regulatory program that is not consistent with the basis for OSMRE's approval of the State program.'' This proposed change is designed to indicate that a ''State regulatory program issue'' could be a possible violation that emanates from a State regulatory authority's actions. We are proposing that a possible violation identified in a TDN could, in the appropriate circumstances, be addressed as a State regulatory program issue under 30 CFR 733.12.

We also propose non-substantive changes to the existing language following ''State regulatory program'' and a new last sentence that would read: ''State regulatory program issues will be considered as possible violations and will initially proceed, and may be resolved, under part 842 of this chapter.'' After review of SMCRA section 521(a)(1), 30 U.S.C. 1271(a)(1), its legislative history, and its intent, and based on our experience implementing the 2020 TDN rule, we determined that any ''noncompliance'' with SMCRA, the Federal implementing regulations, the applicable State regulatory program, or any condition of a permit or exploration approval is a violation under section 521(a)(1). In our experience, the majority of violations result from an operator's or permittee's erroneous implementation of an approved permit. Under this proposed rule, a permit defect would also be considered a possible violation subject to the TDN process and could, in appropriate circumstances, be grouped together with substantively similar possible violations and addressed as a State regulatory program issue under part 733. We propose to consider a ''permit defect''—*i.e.,* a deficiency in a permit-related action taken by a State regulatory authority—to be a possible violation that would start, and may be resolved, under the 30 CFR part 842 TDN process.

I. Proposed 30 CFR 733.12(a)

We propose minor, non-substantive revisions to existing 30 CFR 733.12(a). We propose to remove ''in order'' before ''to ensure'' as it is unnecessary. We also propose to change ''escalate into'' to ''become'' to be more concise. These proposed changes would not alter the substance of the existing provisions. In existing § 733.12(a)(1), we propose to add ''including a citizen complainant'' at the end of the sentence to emphasize that a citizen complainant can be a source of information that allows us to identify a State regulatory program issue. In existing § 733.12(a)(2), we proposed to add ''initiate procedures to'' before ''substitute Federal enforcement'' and also to add ''in accordance with § 733.13'' to the end of the sentence to indicate that there is a process for substituting Federal enforcement or withdrawing approval of a State regulatory program.

J. Proposed 30 CFR 733.12(b)

We are proposing to modify existing § 733.12(b), to, among other things, require development and approval of an action plan for all State regulatory program issues, along with a specific timeframe for development and approval of such a plan. The first sentence of the existing provision provides that OSMRE's ''Director or his or her delegate may employ any number of compliance strategies to ensure that the State regulatory authority corrects a

State regulatory program issue in a timely and effective manner.'' Under the second sentence of the existing provision, actions plans are only required to be developed and instituted ''if the Director or delegate does not expect that the State regulatory authority will resolve the State regulatory program issue within 180 days after identification or that it is likely to result in a violation of the approved State program . . . .''

The proposed rule would revise the first sentence of 733.12(b) to read: ''For each State regulatory program issue, the Director or their designee, in consultation with the State regulatory authority, *will develop and approve an action plan within 60 days* of identification of a State regulatory program issue.'' (Emphasis added.) Rather than using other strategies to bring the State regulatory authority into compliance, the revised provision would require immediate development of an action plan that prescribes actions and timeframes for correcting State regulatory program issues.

Additionally, we propose to add a new second sentence that would allow us and the relevant State regulatory authority to ''identify [within 10 business days] interim remedial measures that may abate the existing condition or issue.'' We propose to remove the existing second sentence, which includes the 180-day language, and replace it with 60 days for development and approval of an action plan and the 10-day interim remedial measure language. The proposed provisions would ensure that corrective action occurs quickly so that resources are not wasted, and no avoidable environmental harm occurs. These proposed changes would allow us to immediately begin working with a State regulatory authority to develop an action plan to resolve issues rather than waiting up to 180 days, as is provided in the existing rules.

It bears repeating that we propose to remove the requirement for an action plan when a State regulatory program issue ''is likely to result in a violation of the approved State program.'' Under this proposed rule, all State regulatory program issues would begin as possible violations under § 842.11. We also propose the non-substantive substitution of the word ''designee'' for the word ''delegate'' throughout this section. Finally, at the end of the section, we propose to add, ''The requirements of an action plan are as follows:'' to lead into the action plan requirements at 30 CFR 733.12(b)(1) through (4).

K. Proposed 30 CFR 733.12(b)(1) Through (4)

In the first sentence of existing 30 CFR 733.12(b)(1), we propose the non-substantive inclusion of the word ''identify'' before ''an effective mechanism for timely correction'' for clarity. We are also proposing to modify § 733.12(b)(1) by adding a new second sentence that would require the State regulatory authority to ''complete *all identified actions* contained within an action plan within 365 days from when OSMRE sends the action plan to the relevant State regulatory authority.'' (Emphasis added.) Action plans should be developed and written so that the actions will be achievable within the 365-day time frame. For example, a State regulatory program issue may require a State program amendment, but the State program amendment process normally exceeds 365 days from start to finish. In this instance, an identified action in the action plan could be submission of a State program amendment or, if State legislative approval is required, submission of a plan to accomplish the program amendment, recognizing that the State program amendment likely would not be finalized within 365 days. However, under proposed § 733.12(d), even when an action plan is in place, we and a State regulatory authority could still take appropriate enforcement actions, such as actions that may be required to abate an imminent harm situation. Further, at 30 CFR 733.12(b)(2), we propose to add ''upon approval of the action plan'' to the end of the existing section to clarify that an approved action plan will identify any remedial measures that a State regulatory authority must take immediately after the action plan is approved.

Existing § 733.12(b)(3) sets forth additional information that an action plan must include. In § 733.12(b)(3)(iii) and (iv), we propose the non-substantive change of replacing the word ''explicit'' with ''specific.'' Also, in existing § 733.12(b)(3)(iii), after the language ''complete resolution,'' we propose to insert ''of the violation,'' which would again indicate that State regulatory program issues would be considered as possible violations under this proposed rule. In existing § 733.12(b)(3)(v), we propose to insert ''detailed'' before ''schedule for completion'' to clarify that each action identified in an action plan and associated completion milestone must be set forth with sufficient detail so that that there is a clear understanding of what is required under the action plan.

Additionally, we propose non-substantive changes to existing 30 CFR 733.12(b)(3)(vi). The existing provision reads: ''A clear explanation that if the action plan, upon completion, does not result in correction of the State regulatory program issue, the provisions of § 733.13 may be triggered.'' We propose minor modifications to this language to read: ''A clear explanation that if, upon completion of the action plan, the State regulatory program issue is not corrected, the provision of § 733.13 may be initiated.'' This language would ensure that if a State regulatory authority does not address the issues identified in an action plan and otherwise fails to complete the action plan within the time designated, we can begin the process under 30 CFR 733.13 for substituting Federal enforcement for, or withdrawing approval of, the relevant State program.

Finally, we propose to add a new paragraph 30 CFR 733.12(b)(4), which would state: ''Once all items in paragraphs (b)(1) through (3) of this section are satisfactorily addressed, OSMRE will approve the action plan. If the State regulatory authority does not cooperate with OSMRE in developing the action plan, OSMRE will develop the action plan within the guidelines listed in paragraphs (b)(1) through (3) of this section and require the State regulatory authority to comply with the action plan.'' We propose to add this provision to ensure that action plans to address State regulatory program issues are always developed, and that we can create and enforce an action plan with or without the State regulatory authority's input to ensure that violations are timely addressed.

L. Proposed 30 CFR 733.12(c)

We propose non-substantive and grammatical changes to existing § 733.12(c) for clarity. Among other things, we propose to substitute ''Each'' for ''These'' and ''relevant'' for the second occurrence of ''applicable.''

M. Proposed 30 CFR 733.12(d)

In § 733.12(d), we propose to insert ''additional'' before ''appropriate oversight enforcement action'' to indicate that any oversight enforcement action that OSMRE takes is in addition to an initial TDN and corresponding identification of a State regulatory program issue. We propose to end the sentence there and delete the last clause of the existing language, which references appropriate oversight enforcement actions ''in the event that a previously identified State regulatory program issue results in or may imminently result in a violation of the

approved State program.'' We propose this change to comport with the fact that, under this proposed rule, all ''permit defects'' or ''State regulatory program issues'' would be considered possible violations in the first instance, even when they are not on the ground or when mining has not yet started. As explained above, this proposed rule would require us to issue a TDN when we have reason to believe a violation exists, even in the form of a permit defect; thus, the language we propose to delete would no longer be necessary. The revised provision would read: ''Nothing in this section prevents a State regulatory authority from taking direct enforcement action in accordance with its State regulatory program or OSMRE from taking additional appropriate oversight enforcement action.''

IV. Procedural Matters and Required Determinations

Executive Order 12630—Governmental Actions and Interference With Constitutionally Protected Property Rights

This proposed rule would not result in a taking of private property or otherwise have regulatory takings implications under Executive Order 12630. The proposed rule would primarily concern Federal oversight of approved State programs and enforcement when permittees and operators are not complying with the law. Therefore, the proposed rule would not result in private property being taken for public use without just compensation. A takings implication assessment is not required.

Executive Order 12866—Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that that this proposed rule is not significant because it would not have a $100 million annual impact on the economy, raise novel legal issues, or create significant impacts.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that agencies must base regulations on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Executive Order 12988—Civil Justice Reform

This proposed rule complies with the requirements of Executive Order 12988. Among other things, this proposed rule:

(a) Satisfies the criteria of section 3(a) requiring that all regulations be reviewed to eliminate drafting errors and ambiguity; be written to minimize litigation; and provide clear legal standards for affected conduct.

(b) Satisfies the criteria of section 3(b) requiring that all regulations be written in clear language and contain clear legal standards.

Executive Order 13132—Federalism

Under the criteria in section 1 of Executive Order 13132, this proposed rule would not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. While revising the existing regulations governing the TDN process would have a direct effect on the States and the Federal government's relationship with the States, this effect would not be significant, as it would neither impose substantial unreimbursed compliance costs on States nor preempt State law. Furthermore, this proposed rule would not have a significant effect on the distribution of power and responsibilities among the various levels of government. While we may issue more TDNs to State regulatory authorities under this proposed rule, the proposed rule would not significantly increase burdens on State regulatory authorities to address and resolve underlying issues. As such, a federalism summary impact statement is not required.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this proposed rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it would not have substantial direct effects on federally recognized Tribes and that consultation under the Department's tribal consultation policy is not required. Currently, no Tribes have achieved primacy. Thus, this proposed rulemaking would not impact the regulation of surface coal mining on Tribal lands. However, we have coordinated with Tribes to inform them of the proposed rulemaking. We coordinated with the Navajo Nation, Crow Tribe of Montana, Hopi Tribe of Arizona, Choctaw Nation of Oklahoma, Muscogee (Creek) Nation, and Cherokee Nation and have received no comments or concerns. None of the Tribes have requested consultation.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rule that is: (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy; or is designated as a significant energy action by the Office of Management and Budget. Because this proposed rule is not deemed significant under Executive Order 12866, and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

This proposed rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866; and this action does not concern environmental health or safety risks disproportionately affecting children.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), 15 U.S.C. 3701 *et seq.,* directs Federal agencies to use voluntary consensus standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. OMB Circular A–119 at p. 14. This proposed rule is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would

be inconsistent with SMCRA and is not applicable to this proposed rulemaking.

National Environmental Policy Act

We have determined that the proposed changes to the existing regulations are categorically excluded from environmental review under the National Environmental Policy Act (NEPA). 42 U.S.C. 4321 *et seq.* Specifically, we have determined that the proposed rule is administrative or procedural in nature in accordance with the Department of the Interior's NEPA regulations at 43 CFR 46.210(i). The regulation provides a categorical exclusion for ''[p]olicies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis . . . .'' The proposed rule would not change the substantive regulations—whether State or Federal—with which SMCRA permittees must already comply. Rather, it would primarily change the procedure we use to notify a State regulatory authority when we have reason to believe that there is a violation of SMCRA, the Federal regulations, the relevant State regulatory program, or a permit condition. We have also determined that the proposed rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Paperwork Reduction Act

This action does not impose any new information collection burden under the Paperwork Reduction Act. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 1029–0118. This action does not impose an information collection burden because OSMRE is not making any changes to the information collection requirements.

Regulatory Flexibility Act

We evaluated the impact of the proposed regulatory changes and have determined the rule changes would not induce, cause, or create any unnecessary burdens on the public, State regulatory authorities, or small businesses; would not discourage innovation or entrepreneurial enterprises; and would be consistent with SMCRA, from which the proposed regulations draw their implementing authority. For these reasons, we certify that this proposed rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Regulatory Flexibility Act generally requires Federal agencies to prepare a regulatory flexibility analysis for rules that are subject to the notice-and-comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553), if the rule would have a significant economic impact, whether detrimental or beneficial, on a substantial number of small entities. *See* 5 U.S.C. 601–612. Congress enacted the Regulatory Flexibility Act to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit entities.

Congressional Review Act

This proposed rule is not a major rule under the Congressional Review Act. 5 U.S.C. 804(2). Specifically, the proposed rule: (a) would not have an annual effect on the economy of $100 million or more; (b) would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) would 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.

Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on State, local, or Tribal governments, or the private sector, of $100 million or more in any given year. The proposed rule would not have a significant or unique effect on State, local, or Tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects

30 CFR Part 733

Intergovernmental relations, Surface mining, Underground mining.

30 CFR Part 842

Law enforcement, Surface mining, Underground mining.

Delegation of Signing Authority

The action taken herein is pursuant to an existing delegation of authority.

Laura Daniel-Davis,

Principal Deputy Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, the Department of the Interior, acting through OSMRE, proposes to amend 30 CFR parts 733 and 842 as follows:

PART 733—EARLY IDENTIFICATION OF CORRECTIVE ACTION, MAINTENANCE OF STATE PROGRAMS, PROCEDURES FOR SUBSTITUTING FEDERAL ENFORCEMENT OF STATE PROGRAMS, AND WITHDRAWING APPROVAL OF STATE PROGRAMS

■ 1. The authority citation for part 733 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Revise § 733.5 to read as follows:

§ 733.5 Definitions.

As used in this part, the following terms have the specified meanings:

Action plan means a detailed plan that the Office of Surface Mining Reclamation and Enforcement (OSMRE) prepares to resolve a State regulatory program issue identified during OSMRE's oversight of a State regulatory program and that includes a schedule that contains specific requirements that a State regulatory authority must achieve in a timely manner.

State regulatory program issue means an issue OSMRE identifies during oversight of a State or Tribal regulatory program that may result from a State regulatory authority's implementation, administration, enforcement, or maintenance of all or any portion of its State regulatory program that is not consistent with the basis for OSMRE's approval of the State program. This may include, but is not limited to, instances when a State regulatory authority has not adopted and implemented program amendments that are required under § 732.17 and subchapter T of this title, and issues related to the requirement in section 510(b) of the Act that a State regulatory authority must not approve a permit or revision to a permit, unless the State regulatory authority finds that the application is accurate and complete and that the application is in compliance with all requirements of the Act and the State regulatory program. State regulatory program issues will be considered as possible violations and will initially proceed, and may be resolved, under part 842 of this chapter.

■ 3. Revise § 733.12 to read as follows:

§ 733.12 Early identification and corrective action to address State regulatory program issues.

(a) When the Director identifies a State regulatory program issue, he or she should take action to make sure the identified State regulatory program issue is corrected as soon as possible to ensure that it does not become an issue that would give the Director reason to believe that the State regulatory authority is not effectively implementing, administering, enforcing, or maintaining all or a portion of its State regulatory program.

(1) The Director may become aware of State regulatory program issues through oversight of State regulatory programs or as a result of information received from any source, including a citizen complainant.

(2) If the Director concludes that the State regulatory authority is not effectively implementing, administering, enforcing, or maintaining all or a portion of its State regulatory program, the Director may initiate procedures to substitute Federal enforcement of a State regulatory program or withdraw approval of a State regulatory program, in accordance with § 733.13.

(b) For each State regulatory program issue, the Director or their designee, in consultation with the State regulatory authority, will develop and approve an action plan within 60 days of identification of a State regulatory program issue. Within 10 business days of OSMRE's determination that a State regulatory program issue exists, OSMRE and the State regulatory authority may identify interim remedial measures that may abate the existing condition or issue. The requirements of an action plan are as follows:

(1) An action plan will be written with specificity to identify the State regulatory program issue and identify an effective mechanism for timely correction. The State regulatory authority must complete all identified actions contained within an action plan within 365 days from when OSMRE sends the action plan to the relevant State regulatory authority.

(2) An action plan will identify any necessary technical assistance or other assistance that the Director or his or her designee can provide and remedial measures that a State regulatory authority must take immediately upon approval of the action plan.

(3) An OSMRE approved action plan must also include:

(i) An action plan identification number;

(ii) A concise title and description of the State regulatory program issue;

(iii) Specific criteria for establishing when complete resolution of the violation will be achieved;

(iv) Specific and orderly sequence of actions the State regulatory authority must take to remedy the problem;

(v) A detailed schedule for completion of each action in the sequence; and

(vi) A clear explanation that if, upon completion of the action plan, the State regulatory program issue is not corrected, the provisions of § 733.13 may be initiated.

(4) Once all items in paragraphs (b)(1) through (3) of this section are satisfactorily addressed, OSMRE will approve the action plan. If the State regulatory authority does not cooperate with OSMRE in developing the action plan, OSMRE will develop the action plan within the guidelines listed in paragraphs (b)(1) through (3) of this section and require the State regulatory authority to comply with the action plan.

(c) All identified State regulatory program issues, and any associated action plans, must be tracked and reported in the applicable State regulatory authority's Annual Evaluation Report. Each State regulatory authority Annual Evaluation Report will be accessible through OSMRE's website and at the relevant OSMRE office. Within each report, benchmarks identifying progress related to resolution of the State regulatory program issue must be documented.

(d) Nothing in this section prevents a State regulatory authority from taking direct enforcement action in accordance with its State regulatory program or OSMRE from taking additional appropriate oversight enforcement action.

PART 842—FEDERAL INSPECTIONS AND MONITORING

■ 4. The authority citation for part 842 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 5. Add § 842.5 to read as follows:

§ 842.5 Definitions.

As used in this part, the following terms have the specified meanings:

Citizen complaint means any information received from any person notifying the Office of Surface Mining Reclamation and Enforcement (OSMRE) of a possible violation of the Act, this chapter, the applicable State regulatory program, or any condition of a permit or an exploration approval. This information must be provided in writing (or orally, followed up in writing).

Ten-day notice means a communication mechanism that OSMRE uses, in non-imminent harm situations, to notify a State regulatory authority under §§ 842.11(b)(l)(ii)(B)(*1*) and 843.12(a)(2) when an OSMRE authorized representative has reason to believe that any permittee and/or operator is in violation of the Act, this chapter, the applicable State regulatory program, or any condition of a permit or an exploration approval or when, on the basis of a Federal inspection, OSMRE determines that a person is in violation of the Act, this chapter, the applicable State regulatory program, or any condition of a permit or an exploration approval and OSMRE has not issued a previous ten-day notice for the same violation.

■ 6. Amend § 842.11 by:

■ a. Revising paragraphs (b)(1)(i), (b)(1)(ii)(B)*(1)* and *(3),* and (b)(1)(ii)(B)(*4*)(*ii*);

■ b. Redesignating paragraphs (b)(1)(ii)(B)(*4*)(*iii*) through (*v*) as paragraphs (b)(1)(ii)(B)(*4*)(*iv*) through (*vi*) respectively;

■ c. Adding a new paragraph (b)(1)(ii)(B)(*4*)(*iii*); and

■ d. Revising paragraph (b)(2).

The revisions and additions read as follows:

§ 842.11 Federal inspections and monitoring.

* * * * *

(b)(1) * * *

(i) When the authorized representative has reason to believe on the basis of information received from a citizen complainant, information available in OSMRE files at the time that OSMRE is notified of the possible violation (other than information resulting from a previous Federal inspection), and publicly available electronic information, that there exists a violation of the Act, this chapter, the applicable State regulatory program, or any condition of a permit or an exploration approval, or that there exists any condition, practice, or violation that creates an imminent danger to the health or safety of the public or is causing or could reasonably be expected to cause a significant, imminent environmental harm to land, air, or water resources; and

(ii) * * *

(B)(*1*) The authorized representative has notified the State regulatory authority of the possible violation and more than ten days have passed since notification, and the State regulatory authority has not taken appropriate action to cause the violation to be

corrected or to show good cause for not doing so, or the State regulatory authority has not provided the authorized representative with a response. After receiving a response from the State regulatory authority, but before a Federal inspection, the authorized representative will determine in writing whether the standards for appropriate action or good cause have been satisfied. A State regulatory authority's failure to respond within ten days does not prevent the authorized representative from making a determination, and will constitute a waiver of the State regulatory authority's right to request review under paragraph (b)(1)(iii) of this section. Where appropriate, OSMRE may issue a single ten-day notice for substantively similar possible violations found on two or more permits involving a single permittee, including two or more substantively similar possible violations identified in one or more citizen complaints.

* * * * *

(*3*) Appropriate action includes enforcement or other action authorized under the approved State regulatory program to cause the violation to be corrected.

(*4*) * * *

(*ii*) The State regulatory authority has initiated an investigation into a possible violation and has determined that it requires an additional amount of time to determine whether a violation exists. The State regulatory authority may request up to 30 additional days to complete its investigation of the issue; in complex situations, the State regulatory authority may request up to an additional 60 days to complete the investigation. In all circumstances, an extension request must be supported by an explanation of the need for, and the measures being undertaken that justify, an extension, along with any relevant documentation. The authorized representative has discretion to approve the requested time extension or establish the length of time that the State regulatory authority has to complete its investigation. The sum total of additional time for any one possible violation must not exceed 90 days. At the conclusion of the specified additional time, the authorized representative will re-evaluate the State regulatory authority's response, including any additional information provided;

(*iii*) OSMRE has identified substantively similar possible violations on separate permits and considers the possible violations as a single State regulatory program issue addressed through § 733.12. Previously identified possible violations that were the subject of ten-day notices or subsequent, substantively similar violations may be included in the same State regulatory program issue;

* * * * *

(b)(2) An authorized representative will have reason to believe that a violation, condition, or practice referred to in paragraph (b)(1)(i) of this section exists if the facts that a complainant alleges, or facts that are otherwise known to the authorized representative, support the existence of a possible violation, condition, or practice. In making this determination, the authorized representative will consider information from a citizen complainant, information available in OSMRE files at the time that OSMRE is notified of the possible violation, and publicly available electronic information. All citizen complaints will be considered as requests for a Federal inspection under § 842.12. If the information supplied by the complainant results in a Federal inspection, the complainant will be offered the opportunity to accompany OSMRE on the Federal inspection.

* * * * *

■ 7. Revise § 842.12(a) to read as follows:

§ 842.12 Requests for Federal inspections.

(a) Any person may request a Federal inspection under § 842.11(b) by providing to an authorized representative a signed, written statement (or an oral report followed by a signed, written statement) setting forth information that, along with any other information the complainant chooses to provide, may give the authorized representative reason to believe that a violation, condition, or practice referred to in § 842.11(b)(1)(i) exists. In making this determination, the authorized representative will consider information from a citizen complainant, information available in OSMRE files at the time that OSMRE receives the request for a Federal inspection, and publicly available electronic information. The statement must also set forth a phone number, address, and, if available, an email address where the person can be contacted. All citizen complaints under § 842.11(b) will be considered as requests for a Federal inspection. If the information supplied by the complainant results in a Federal inspection, the complainant will be offered the opportunity to accompany OSMRE on the Federal inspection.

* * * * *

[FR Doc. 2023–08370 Filed 4–24–23; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 298

[Docket Number MARAD–2023–0086]

RIN 2133–AB98

Amendment to the Federal Ship Financing Program Regulations; Financial Requirements

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: This document serves to inform interested parties and the public that the Maritime Administration (MARAD) proposes to amend its regulations implementing the Federal Ship Financing Program's (Title XI Program) financial requirements. This action is necessary to implement statutory changes and update the existing financial requirements imposed on Title XI Program obligors to align with more up-to-date vessel financing and federal credit best practices. MARAD solicits written comments on this rulemaking.

DATES: Written comments are requested on or before June 26, 2023.

ADDRESSES: Your comments should refer to DOT Docket Number MARAD–2023–0086 and may be submitted by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Search ''MARAD–2023–0086'' and follow the instructions for submitting comments.
- *Email: Rulemakings.MARAD@dot.gov.* Include ''MARAD–2023–0086'' in the subject line of the message.
- *Mail/Hand-Delivery/Courier:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590. If you would like to know that your comments reached the facility, please enclose a stamped, self-addressed postcard or envelope. The Docket Management Facility is open 9:00 a.m. to 5:00 p.m. E.T., Monday through Friday, except on Federal holidays.

You may view the public comments submitted on this rulemaking at *www.regulations.gov.* When searching for comments, please use the Docket ID: MARAD–2023–0086. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *www.FederalRegister.gov* and the Government Publishing Office's website at *www.GovInfo.gov.*

Note: If you mail or hand-deliver your input, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission. If you submit your inputs by mail or hand-delivery, they must be submitted in an unbound format, no larger than 8½ by 11 inches, single-sided, suitable for copying and electronic filing.

Instructions: All submissions received must include the agency name and docket number or Regulation Identifier Number (''RIN'') for this rulemaking. All comments received will be posted without change to the docket at *www.regulations.gov*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the section entitled Public Participation.

To avoid duplication, please use only one of the above methods. See the ''Public Participation'' section below for instructions on submitting comments, including collection of information comments, if any, for the Office of Information and Regulatory Affairs, Office of Management and Budget. Unless there is a request for confidential treatment, all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: David M. Gilmore, Director, Office of Marine Financing, at (202) 366–5737, or via email at *marinefinancing@dot.gov*. You may send mail to Mr. Gilmore at Department of Transportation, Maritime Administration, Office of Marine Financing, 1200 New Jersey Avenue SE, Washington, DC 20590. If you have questions on viewing the Docket, call Docket Operations, telephone: (800) 647–5527.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Transportation, through MARAD, is authorized to provide guarantees of debt (obligation guarantees) to finance all types of vessel construction and shipyard modernization and improvement, except for fishing vessels. The Title XI Program is a loan guarantee program, administered by MARAD, which was established under Title XI of the Merchant Marine Act, 1936, Public Law 74–835, codified at 46 U.S.C. Chapter 537, as amended (the ''Act''). Title XI provides for the full faith and credit of the United States, acting by and through the Maritime Administrator, for the payment of debt obligations for: (1) U.S. shipowners for the purpose of financing or refinancing U.S. flag vessels constructed, reconstructed, or reconditioned in U.S. shipyards; and (2) U.S. shipyards for the purpose of financing advanced shipbuilding technology and modern shipbuilding technology of a privately-owned shipyard facility located in the U.S. As the Title XI Program guarantees full payment of the obligation's unpaid principal and interest in the event of a default by the borrower, both the statute and regulations contain several criteria and requirements intended to reduce the risk of a loan default. Though the Title XI Program regulations have been amended over the years, the current financial requirements and limitations remain substantially the same as when MARAD introduced them in 1978. As lending practices have evolved, MARAD's regulatory standards have not changed to reflect modern lending practices for vessel financing. For example, when the regulations where implemented, certain leases were not included as an expense under generally accepted accounting principles (GAAP), but today GAAP requires that all leases be included as an expense. Today, retained earnings are also expected to be included in any calculation of equity or net worth pursuant to GAAP. Accordingly, the proposed modifications to the regulations will eliminate confusion and align the Title XI Program regulations with modern accounting standards.

Prior to execution of a guarantee, MARAD is bound by statute to, among other things, make determinations of economic soundness of the project and the financial and operating capability of the applicant. To that end, the Title XI regulations currently require each borrower, and operator if applicable, to have and maintain: (1) working capital of at least $1; (2) at least 90 percent of its equity as shown on the last audited balance sheet; and (3) long-term debt not to exceed twice its equity. By this notice of proposed rulemaking, MARAD proposes to modernize its financial review process by removing static financial covenants and loan thresholds and replacing them with a review and evaluation of the creditworthiness of each borrower based on revenue metrics based on federal credit and maritime lending best practices. The use of these revenue metrics is intended to improve the quality of MARAD financial requirements applied to new borrowers. As part of its regular programmatic evaluation process, MARAD frequently seeks feedback from potential applicants and borrowers on its processes. Potential applicants have advised MARAD that the challenges caused by the regulatory requirements are a reason why they will not use the program. Borrowers also have cited the incompatibility of Title XI debt financial covenants with the other lender covenants as an obstacle in the prompt processing and approval of loan guarantee applications.

The ''National Defense Authorization Act for Fiscal Year 2020,'' (Pub. L. 116–92; December 20, 2019) (''NDAA 2020'') established the Federal Financing Bank as the ''preferred lender'' for the Title XI Program. Additionally, the NDAA 2020 directed MARAD to periodically review Title XI application procedures and documents to assure they ''meet current commercial best practices to the extent permitted by law.'' The 2020 NDAA also provided that MARAD establish a process for expedited consideration of low-risk applications which would ''utilize, to the extent practicable, relevant Federal and industry best practices found in the maritime and shipbuilding industries.'' As a result, MARAD identified best practices from federal credit programs that make loans and obligation guarantees similar to the Title XI Program. MARAD considered a review of federal credit practices that identified the Title XI Program was the only program with regulatorily-imposed financial covenants and thresholds.[1] This deviation from federal credit best practices was highlighted as a significant hinderance to the Title XI Program's ability to tailor the terms of credit assistance to address the characteristics of a specific project.

Restrictions on the flexibility of the program limit the program's ability to succeed. Reliance on the current static metrics and limited amortization requirements prevent the Title XI Program from adjusting its financial terms and conditions and debt amortization when best credit practices would recommend otherwise. The proposals are intended to attract a higher volume of high-quality applicants and mitigate risk to the U.S. government.

Moreover, with the implementation of the Federal Financing Bank as the preferred lender for Title XI obligation guarantees, there is no longer a need for the strict uniformity in the regulatory structure of the guaranteed obligations. Previously, Title XI guaranteed debt was marketed to the public through

[1] U.S. Department of Transportation, Maritime Administration, *Federal Credit and Maritime Lending Industry Best Practices,* June 2020. Available at *https://www.maritime.dot.gov/grants/title-xi/statute-regulations-and-guidance.*

investment banks. This created a need for uniformity to encourage the purchase of the debt by entities not familiar with maritime financings and to allow for easier resale by a debt purchaser to a third-party at a future date. The expectation of uniformity by the market limited the payment schedule options available for Title XI Program participants in circumstances where it may have been in the U.S. government's best interest to structure the debt differently to mitigate risk.

Due to the length of time since the regulations were last updated, the availability of modern financial requirements of similar federal programs, the evolving maritime environment, changes to federal credit and maritime lending best practices, and updates to the Title XI statute, MARAD proposes to amend its regulations. These proposed amendments would include permitting MARAD to use financial requirements, consistent with federal credit and maritime lending best practices for entities having a similar credit rating that MARAD determines are necessary and appropriate to protect the interest of the United States. The proposed amendments would also allow MARAD to use alternative methods of amortization, other than level principal or level debt payment, when an independent financial advisor approved by MARAD conducts independent analysis and review and demonstrates that such other method is in the best interests of the United States.

The proposed rule is intended to update the lending parameters in the current regulations, which no longer best achieve the intended purpose of minimizing the risk of Title XI Program defaults and to better align the lending practices to reflect federal credit and maritime lending best practices. Additionally, MARAD expects that the proposed regulations would reduce the economic burden on applicants in complying with Title XI Program requirements that are inconsistent with other lending instruments. MARAD also expects that the updated lending parameters should encourage the construction of vessels in United States shipyards which otherwise would not meet the current constrained Title XI Program financial requirements.

Public Participation

How do I submit comments on the proposed rule?

Include the docket number in your comments to ensure that your comments are correctly filed in the Docket. We encourage you to provide concise comments; however, you may attach additional documents as necessary. There is no limit on the length of the attachments. Please submit your comments, including the attachments, following the instructions provided under the above-entitled heading **ADDRESSES**.

MARAD will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, MARAD will also consider comments received after that date.

For access to the docket to submit or read comments received, go to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590. The Docket Management Facility is open 9:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays. To review documents, read comments or to submit comments, the docket is also available online at *www.regulations.gov.*, keyword search ''MARAD–2023–0086.''

Please note that even after the comment period has closed, MARAD will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, MARAD recommends that you periodically check the Docket for new material.

Will my comments be made available to the public?

Before including your address, phone number, email address or other personal information in your comment, be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. When you submit comments containing information claimed to be confidential information, you should include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

I. Regulatory Analyses and Notices

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

Executive Order 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review) and DOT Regulatory Policies and Procedures

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), supplemented by EO13563 (76 FR 3821, January 18, 2011) and USDOT policies and procedures, a determination must be made whether a regulatory action is ''significant,'' and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Order. The Order defines ''significant regulatory action'' as one likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities. (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency. (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

This notice of proposed rulemaking has been determined to be a significant regulatory action under section 3(f) of E.O. 12866. The rule was therefore reviewed by the Office of Information and Regulatory Affairs (OIRA) within OMB prior to publication.

Analysis of Benefits and Costs

The Title XI Program guarantees full payment of the obligation's unpaid principal and interest in the event of a default by the borrower. Both the statute and MARAD's implementing regulations also contain several criteria and requirements intended to reduce the risk of a loan default. Though the Title XI Program regulations have been amended over the years, the current financial requirements and limitations remain substantially the same as when

they were introduced in 1978. As lending practices have evolved, the regulatory standards have not changed to reflect current lending practices for vessel financing.

Benefits

The major benefits of amending Part 298 will be to: (1) modernize MARAD's financial review process by removing static financial covenants and loan thresholds and replacing them with best practices intended to improve the quality of MARAD financial reviews; and (2) allow MARAD to examine more indicators of financial health, thus improving MARAD's ability to accurately assess applicants and to better mitigate financial risk to the Government.

Costs

MARAD does not believe that the rulemaking is likely to impose quantifiable or nonquantifiable costs. The primary function of this regulatory change is to modernize MARAD financial review methods and processes, thereby improving MARAD's ability to evaluate applicants.

Analysis of Alternatives

On December 20, 2019, the NDAA 2020 directed MARAD ''to utilize, to the extent practicable, relevant Federal and industry best practices found in the maritime and shipbuilding industries.'' In considering potential alternatives, MARAD reviewed a number of federal credit programs that make loans and obligation guarantees similar to the Title XI Program. MARAD considered a review of federal credit practices that identified the Title XI Program as the only Federal program with regulatorily-imposed financial covenants and thresholds.[2] The report found that the static regulatory requirements significantly hindered the Title XI Program's ability to tailor the terms of credit assistance to address the characteristics of a specific project. MARAD considered the report's findings in light of its current practices and proposed in this NPRM amendment to conform to the report's findings.

Executive Order 13132 (Federalism)

MARAD has examined the rule pursuant to E.O. 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The Agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule 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.''

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

MARAD has determined that this rulemaking, in which MARAD proposes to amend its regulations implementing the Title XI Program financial requirements to implement statutory changes and update the existing financial requirements imposed on Title XI Program obligors, will not significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in E.O. 13175 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order do not apply.

Executive Order 12372 (Intergovernmental Review)

The requirements of E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking, because it would not directly affect the interests of State and local governments.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires MARAD to assess whether this rulemaking would have a significant economic impact on a substantial number of small entities and to minimize any adverse impact. Potential applicants to the Title XI program are vessel owners and operators, as well as shipyard owners. These industries fit under NAICS codes 336611, Ship Building and Repairing and NAICS codes 483111–483212, which cover different types of transportation by vessel and would include vessel owners and operators.[3] The SBA defines a small business under NAICS code 36611 as a business with 1,250 employees or less and under NAICS code. The SBA defines small businesses under NAICS codes 483111–483212 as businesses with 500–1,500 employees or less, depending on the specific NAICS code.

The Title XI Program guarantees full payment of the obligation's unpaid principal and interest in the event of a default by the borrower. The program maintains a $5000 application fee, a fee that has not increased in 30 years and would remain unchanged by this proposal. MARAD also estimates that the application process currently takes approximately 150 hours, a figure that would also remain unchanged by this proposal. The program provides substantial financial assistance to maritime industry participants, and the proposed changes are intended to eliminate challenges caused by the regulatory requirements, a reason cited by stakeholders as to why they will not use the program. The proposed rule is also intended to make Title XI debt financial covenants compatible with other lender covenants, which stakeholders cited as an obstacle in the prompt processing and approval of loan guarantee applications. MARAD intends for the proposed changes, if finalized, to attract a higher volume of high-quality applicants to the program. Based on the foregoing, MARAD certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988 (Civil Justice Reform)

E.O. 12988 requires that agencies promulgating new regulations or reviewing existing regulations take steps to minimize litigation, eliminate ambiguity and to reduce burdens on the regulated public. MARAD has reviewed this rulemaking and has determined that this rulemaking action conforms to the applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform,

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 requires Agencies to evaluate whether an Agency action would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any 1 year, and if so, to take steps to minimize these unfunded mandates. This action will not result in additional expenditures by State, local, or tribal governments or by any members of the private sector. Therefore, MARAD has

[2] U.S. Department of Transportation, Maritime Administration, *Federal Credit and Maritime Lending Industry Best Practices,* June 2020. Available at *https://www.maritime.dot.gov/grants/title-xi/statute-regulations-and-guidance.*

[3] These NAICS codes are 483111/483112 Deep Sea Freight/Passenger Transportation, 483113/483114 Coastal and Great Lakes Freight/Passenger Transportation, and 4832111/483212 Inland Water Freight/Passenger Transportation. Navigational Services to Shipping, under NAICS code 488330 may also be applicable. SBA defines a small business under this NAICS code as having an average annual revenue of $41.5 million or less.

not prepared an assessment pursuant to the Unfunded Mandates Reform Act.

Regulation Identifier Number (RIN)

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 number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a federal agency unless the collection displays a valid OMB control number. This rulemaking amends an existing regulation without any change to the contemplated submission of information which might otherwise result in a change to the applicant's burden hours. Therefore, the rulemaking can rely on the existing information collected under OMB control number 2133–0018. Information submitted by applicants to the program will continue to be used to evaluate an applicant's project and capabilities, make the required determinations, and administer any agreements executed upon approval of loan guarantees.

Clarity of Regulations

E.O. 12866 requires each Agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed rule clearly stated?

(2) Does the proposed rule contain technical language or terminology that interferes with its clarity?

(3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphs, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more but shorter sections (a ''section'' appears in bold type and is preceded by the symbol ''§'' and a numbered heading; for example, ''§ 393.21 Who can apply?'')

(5) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** part of this preamble helpful in understanding the proposed rule?

(6) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Division of Legislation and Regulations, Department of Transportation, Maritime Administration, Office of the Chief Counsel, Room W24–220, 1200 New Jersey Ave. SE, Washington, DC 20590. You may also email the comments to this address: *Rulemakings.MARAD@dot.gov*. Please include the RIN number or docket number for this rule in your submission.

List of Subjects in 46 CFR Part 298

Obligation guarantees.

For the reasons described in the preamble, the Maritime Administration proposes to amend 46 CFR part 298 to read as follows:

PART 298—OBLIGATION GUARANTEES

Subpart B—Eligibility

■ 1. Amend § 298.13 by revising paragraphs (d) introductory text, (d)(2)(ii), (d)(3) introductory text, (e) introductory text, (e)(3)(i), and (f) through (i) to read as follows:

§ 298.13 Financial requirements.

* * * * *

(d) *Financial definitions.* For the purpose of this section and §§ 298.35, 298.36, and 298.42 of this part:

(2) * * *

(ii) In determining current liabilities, you must deduct any excess of unterminated voyage expenses over unterminated voyage revenue.

(3) ''Equity'' or ''Net Worth'' means, as of any date, (the total of paid-in-capital stock, paid-in surplus, earned surplus, retained earnings, and appropriated surplus,) and all other amounts that would be included in net worth in accordance with GAAP, but does not include:

* * * * *

(e) *Applicability.* The financial resources must be adequate to meet the financial terms MARAD requires pursuant to paragraph (f) of this section.

(3) * * *

(i) A pro forma balance sheet at the time of the application; and

* * * * *

(f) *Financial requirements at Closing.* As a condition of disbursement of a guaranteed loan, the Company must demonstrate financial performance that supports a reasonable prospect of repayment taking into account foreseeable negative economic conditions.

(1) The financial requirements of this section are applicable to Companies qualifying under one of the following three categories:

(i) Owner as vessel operator, where the owner is to be the vessel operator;

(ii) Lessee or charterer as operator, where the lessee or charterer is to be the vessel operator; or

(iii) Owner as general shipyard facility, where the owner of a shipyard project is a general shipyard facility.

(2) Qualifying financial performance will be substantiated by financial results over at least the trailing 12 quarters and/or demonstrated by pro-forma financial performance that is underpinned by reasonable assumptions.

(3) Qualifying creditworthiness will be substantiated by reviewing and evaluating applicants based on revenue metrics which include the following non-exhaustive list:

(i) Market factors;

(ii) Strategic positioning;

(iii) Management and governance;

(iv) Pro-forma financial strength;

(v) Project specific factors; and

(vi) Loan terms.

(g) *Adjustments to financial requirements at Closing.* If the owner, although not operating a vessel, assumes any of the operating responsibilities, MARAD may adjust the financial requirements of the owner and operator by increasing the requirements of the owner and decreasing those of the operator.

(h) *Subordinated debt considered to be equity.* With MARAD approval, part of the equity requirements applicable under paragraph (c) of this section may be satisfied by debt, fully subordinated by a subordination agreement with MARAD, as to the payment of principal and interest on the Secretary's Note and any claims secured as provided for in the Security Agreement or the Mortgage. Repayment of subordinated debt may be made only from funds available for payment of dividends or for other distributions, in accordance with requirements of the Title XI Reserve Fund and Financial Agreement (described in section 298.35). Such subordinated debt must not be secured by any interest in property that is security for Guarantees under Title XI, unless the obligor and the lender enter into a written agreement approved by MARAD. The written agreement must provide, among other things, that if any Title XI financing or advance by us to the obligor occurs in the future, such security interest of the lender must become subordinated to any indebtedness to MARAD incurred by the obligor and to any security interest obtained by MARAD in that property or other property, with respect to the subsequent indebtedness.

(i) *Modified requirements.* MARAD may waive or modify the financial terms or requirements otherwise applicable under sections 298.35 and 298.42, upon

determining that there is adequate security for the guarantees or that such waiver or modification is in the best interests of the United States. MARAD may impose similar financial requirements on any person providing other security for the guarantees.

Subpart C—Guarantees

§ 298.21 [Amended]

■ 2. Amend § 298.21, in paragraph (b)(1), by removing the word ''Equity'' and adding in its place the word ''equity''.

■ 3. Amend § 298.22 by revising paragraph (b) to read as follows:

§ 298.22 Amortization of Obligations.

* * * * *

(b) Usually, the payment of principal (amortization) must be made semi-annually, but in no event less frequently than on an annual basis, and in either case the amortization must be in equal payments of principal (level principal), unless MARAD approves the periodic payment of a constant aggregate amount, comprised of both interest and principal components that are variable in amount (level payment). No other proposed method of amortization will be allowed that would reduce the amount of periodic amortization below that determined under the level principal or level payment basis at any time prior to maturity of the obligations, except where a third-party expert approved or engaged by MARAD conducts an independent analysis and review of a project and structure of an obligation and demonstrates that such other method is in the best interests of the United States.

Subpart D—Documentation

■ 4. Amend § 298.35 by revising the introductory text of paragraphs (b)(2) and (d) to read as follows:

§ 298.35 Title XI Reserve Fund and Financial Agreement.

* * * * *

(b)* * *

(2) *Supplemental covenants which may become applicable.* Unless, after giving effect to such transaction or transactions, during any fiscal year of the Company, the Company must remain in compliance with financial terms and requirements specified by MARAD based on the agency's evaluation for financial performance and creditworthiness and appropriate to protect the interest of the United States. The Company must not, without prior MARAD written consent:

* * * * *

(d) *Deposits.* Unless the Company, as of the close of its accounting year, was subject to and in compliance with the financial terms required by paragraph (b)(2) of this section, the Company must make one or more deposits to MARAD to be held by the Depository (the Title XI Reserve Fund), as further provided for in the depository agreement. The amount of deposit for any year, or period less than a full year, where applicable, will be determined as follows:

* * * * *

(Authority: National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116–92, 46 U.S.C. chapter 537, 49 CFR 1.93(a))

By order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–08243 Filed 4–24–23; 8:45 am]

BILLING CODE 4910–81–P

Notices

Federal Register

Vol. 88, No. 79

Tuesday, April 25, 2023

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–TB–23–0022]

Tobacco Inspection and Grading Services: Notice of Request for an Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget for an extension to the currently approved information collection in support of the Fair and Equitable Tobacco Reform Act of 2004, the Rural Development, Food and Drug Administrative, and Related Agencies Appropriations Act for 2002 (Appropriations Act), and the Tobacco Inspection Act and Regulations Governing the Tobacco Standards.

DATES: Comments on this notice must be received by June 23, 2023 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit comments concerning this notice by using the electronic process available at *https://www.regulations.gov.* All comments should reference the document number and the date and the page number of this issue of the **Federal Register**. Written comments may be submitted via mail to Shethir M. Riva, Director, Research and Promotion, Cotton and Tobacco Program, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406. All comments received will be posted without change, including any personal information provided, at *https://www.regulations.gov* and will be included in the record and made available to the public. Please do not include personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. Comments may be submitted anonymously.

FOR FURTHER INFORMATION CONTACT: Shethir M. Riva, Director, Research and Promotion, Cotton and Tobacco Program, Telephone (540) 361–2726 or Email: *CottonRP@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Reporting and Recording Requirements for 7 CFR part 29.

OMB Number: 0581–0056.

Expiration Date of Approval: June 30, 2023.

Type of Request: Extension of a currently approved information collection.

Abstract: The Tobacco Inspection Act (7 U.S.C. 511–511s) requires that all tobacco sold at designated auction markets in the U.S. be inspected and graded. The Appropriations Act (7 U.S.C. 511s note) requires that all tobacco eligible for price support in the U.S. be inspected and graded. The Fair and Equitable Tobacco Reform Act of 2004 (7 U.S.C. 518–519a) eliminated price supports and marketing quotas for all tobacco beginning with the 2005 crop year. Mandatory inspection and grading of domestic and imported tobacco was eliminated as well as the mandatory pesticide testing of imported tobacco and the tobacco market news program. The Tobacco Inspection Act also provides for interested parties to request inspection, pesticide testing, and grading services on a permissive basis. The information collection requirements authorized for the programs under the Tobacco Inspection Act and the Appropriations Act include: application for inspection of tobacco, application and other information used in the approval of new auction markets or the extension of services to designated tobacco markets, and the information required to be provided in connection with auction and nonauction sales.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.60 hours per response.

Respondents: Primarily tobacco companies, tobacco manufacturers, import inspectors, and small businesses or organizations.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 48.

Estimated Number of Responses: 2,415.

Estimated Total Annual Burden on Respondents: 3,651.

Comments are invited on: (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) 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Melissa Bailey,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–08660 Filed 4–24–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of

information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by May 25, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Domestic Quarantine Regulations.

OMB Control Number: 0579–0088.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701–7772) 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. Plant Protection and Quarantine, a program within USDA's Animal and Plant Health Inspection Service (APHIS), is responsible for implementing this Act and does so through the enforcement of its domestic quarantine regulations contained in Title 7 of the Code of Federal Regulations, CFR part 301.

Administering these regulations requires APHIS to use various forms and documents to collect or record information from the variety of individuals who are involved in growing, packing, handling, or transporting, plants and plant products. The collected information is used to determine compliance with domestic quarantines necessary for regulating the movement of articles from infested areas to non-infested areas and ensuring injurious plant diseases and insect pests do not spread within the United States.

Need and Use of the Information: APHIS will collect information obtained through processing of applications for permits or certificates, requests for or during inspections, and processing of violation notices, agreements, and other actions. Information is collected from the growers, packers, shippers, and exporters of regulated articles to ensure that the articles, when moved from a quarantined area, do not harbor injurious plant diseases and insect pests. The information will be used to determine compliance with regulations and for issuance of permits, certificates, and other required documents.

Description of Respondents: State, Local or Tribal agricultural officials; Business or other for-profit; Farms; Individuals.

Number of Respondents: 8,821.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 261,492.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–08668 Filed 4–24–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2022–0030]

National Advisory Committee on Meat and Poultry Inspection

AGENCY: Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture (USDA).

ACTION: Notification of public meeting.

SUMMARY: Pursuant to the provisions of the rules and regulations of the Department of Agriculture and the Federal Advisory Committee Act (FACA), FSIS is announcing a virtual meeting of the National Advisory Committee on Meat and Poultry Inspection (NACMPI). The purpose of the Committee is to advise the Secretary of Agriculture on State and Federal meat and poultry inspection programs, food safety, and other matters that fall within the scope of the Federal Meat Inspection Act (FMIA), and the Poultry Products Inspection Act (PPIA). The committee will convene virtually on June 21–22, 2023, in a public meeting where FSIS will present one charge to the Committee: to offer input on ways FSIS can enhance outreach efforts to best promote equity and bring economic opportunity to underserved communities and individuals, while strengthening the food supply chain and ensuring compliance with food safety regulations.

DATES: The virtual public meeting is scheduled for June 21–22, 2023. The public meeting is from 10 a.m. to 4 p.m. EST on June 21 and 22, 2023.

ADDRESSES: The meeting is virtual and will be viewable via a link provided by email when you register for the meeting. Attendees must pre-register for the meeting. See the pre-registration instructions under ''Registration and Meeting Materials.''

Public Comments: FSIS invites interested persons to submit comments on this meeting by May 25, 2023. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to *https://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250–3700.
- *Hand- or Courier-Delivered Submittals:* Deliver to 1400 Independence Avenue SW, Jamie L. Whitten Building, Room 350–E, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2022–0030. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *https://www.regulations.gov.*

Docket: For access to background documents or comments received, call (202) 937–4272 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Katrina Green, Director, Resource and Administrative Management Staff—Designated Federal Officer, Office of Policy and Program Development, by email at *NACMPI@usda.gov* or telephone at 202–205–0495 regarding specific questions about the Committee or this meeting. General information about the Committee can also be found at: *https://www.fsis.usda.gov/nacmpi.* For the hearing impaired, contact the Federal Information Relay Service: *https://www.federalrelay.us/* or 800–877–0996 (Voice, TTY, ASCII or Spanish).

SUPPLEMENTARY INFORMATION:

Background

The NACMPI was established in 1971 and is authorized under section 301(a)(4) of the FMIA (21 U.S.C. 661(a)(4)) to carry out the responsibilities imposed by 21 U.S.C. 607(c), 624, 645, 661(a)(3), and 661(c), and authorized under 21 U.S.C. 454(a)(4) of the PPIA, to carry out the responsibilities imposed by 21 U.S.C. 454(a)(3), 454(c), 457(b), and 460(e). The purpose of the Committee is to provide advice to the Secretary on meat and poultry inspection programs, food safety, and other matters that fall within the scope of the FMIA and PPIA. The current charter and other information about NACMPI can be found at *https://www.fsis.usda.gov/policy/advisory-committees/national-advisory-committee-meat-and-poultry-inspection-nacmpi*. Membership of NACMPI is drawn from consumers; public health and academic communities; state and local governments; and industry.

On June 21 and 22, 2023, NACMPI will review and discuss how FSIS can enhance outreach efforts to best promote equity and bring economic opportunity to underserved communities and individuals, while strengthening the food supply chain and ensuring compliance with food safety regulations. FSIS is seeking input on the topic regarding prospective applicants for FSIS inspection and existing small and very small establishments currently receiving FSIS inspection.

On January 20, 2021, the Biden Administration issued an Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. The Executive Order states in part, ''The Federal Government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. Affirmatively advancing equity, civil rights, racial justice, and equal opportunity is the responsibility of the whole of our Government.'' On April 9, 2021, the Secretary of Agriculture issued a Civil Rights Policy Statement supporting the goals of equity and opportunity laid out in the Executive Order.

On June 16, 2021, USDA published the **Federal Register** notice ''Identifying Barriers in USDA Programs and Services; Advancing Racial Justice and Equity and Support for Underserved Communities at USDA'' (86 FR 32013), which proposed the following definitions:

- The term ''equity'' means the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.
- The term ''underserved communities'' means populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the preceding definition of ''equity.''

USDA supports the Biden Administration's commitment to providing services in ways that promote equity and opportunity for all. When the COVID–19 pandemic began, USDA made significant investments through its Pandemic Assistance Program, providing immediate relief to producers, businesses, food workers and others. USDA recognizes we must build back better and strengthen the food system across the supply chain, from how our food is produced to how it is purchased, and all the steps in between.

The goals of USDA's Food System Transformation framework include:

- Creating a fairer food system that combats market dominance and helps producers and consumers gain more power in the marketplace by creating new, more and better local market options. USDA's investments will deliver a better deal for farmers, ranchers, growers and consumers.

Consistent with the USDA's goals to better serve American producers and consumers, FSIS strives to provide inspection and other support to all stakeholders equitably. Some recent examples of how FSIS assists small businesses through initiatives to support small and very small establishments include:

- Answering regulatory and technical questions via the Small Plant Help Desk component of askFSIS;
- Providing direct outreach to small and very small establishments;
- Hosting regional small plant round table meetings to give small and very small establishment owners opportunities to interact directly with FSIS senior leaders;
- Organizing monthly industry town hall meetings where FSIS leaders give information about upcoming initiatives or other topics of interest to industry;
- Reducing overtime inspection charges for small and very small establishments;
- Supporting small and very small State-inspected establishments through cooperative partnerships with State inspection programs and the Cooperative Interstate Shipment agreements; and
- Providing numerous guidance documents and related webinars to industry, with a focus on small and very small establishments.

FSIS seeks input on ways to better target outreach to better promote equity and bring economic opportunity to underserved communities and individuals while strengthening the food supply chain. FSIS will ask the committee to consider the following:

Prospective Applicants for FSIS Inspection

1. What obstacles impede individuals in underserved communities from accessing FSIS' information resources, such as: guidelines and HACCP models posted on the FSIS website and the Small Plant Help Desk.
2. What barriers do individuals face when applying for FSIS inspection?
3. What steps, outreach methods, partnerships, or strategies should FSIS consider regarding awareness of existing resources in underserved communities?

Small and Very Small Establishments Currently Receiving FSIS Inspection

1. Are there any FSIS regulations or policies that create barriers or challenges for small and very small, regulated establishments?
2. What are the most critical kinds of information that would help small and very small establishments in underserved communities?
3. How can FSIS more effectively share scientific information with small and very small establishments so that they can use the best available information to support their food safety systems?
4. What organizations are most effective at providing assistance to small and very small establishments and what can FSIS learn from these organizations to enhance its own efforts to assist small and very small establishments?
5. What concrete actions can FSIS take, alone or in partnership with other stakeholder organizations, to more effectively aid existing small and very small FSIS regulated establishments in underserved communities?

FSIS will present the issue described above to the full Committee. The

Committee will then divide into two subcommittees to discuss the issue regarding prospective applicants for FSIS inspection and existing small and very small establishments currently receiving FSIS inspection, respectively. Each subcommittee will provide a report of their comments and recommendations to the full Committee before the meeting concludes on June 22, 2023. FSIS will finalize the agenda on or before the meeting dates and post it on the FSIS website at: *https://www.fsis.usda.gov/news-events/events-meetings*.

Registration and Meeting Materials

There is no fee to register for the public meeting, but pre-registration is mandatory for participants attending. All attendees must register online at *https://www.fsis.usda.gov/news-events/events-meetings*.

Public Comments and Participation in Meetings

Stakeholders will have an opportunity to provide oral comments during the public meeting. Stakeholders must notify FSIS during registration of their wish to speak at the meeting. Stakeholders who do not notify FSIS during registration of their wish to speak will not have the opportunity to comment on the day of the public meeting. Due to the anticipated high level of interest in the opportunity to make public comments and the limited time available to do so, FSIS will do its best to accommodate all persons who registered and requested to provide oral comments and will limit all speakers to three minutes. FSIS encourages persons and groups who have similar interests to consolidate their information for presentation by a single representative.

Transcripts

As soon as the meeting transcripts are available, they will be accessible on the FSIS website at: *https://www.fsis.usda.gov/policy/advisory-committees/national-advisory-committee-meat-and-poultry-inspection-nacmpi*. The transcripts may also be viewed at the FSIS Docket Room at the address listed above.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *https://www.fsis.usda.gov/federal-register*.

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *https://www.fsis.usda.gov/subscribe*. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

In accordance with Federal civil rights law and USDA civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/forms/electronic-forms* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410;

(2) *Fax:* (202) 690–7442; or

(3) *Email: program.intake@usda.gov*.

USDA is an equal opportunity provider, employer, and lender.

Dated: April 18, 2023.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2023–08617 Filed 4–24–23; 8:45 am]

BILLING CODE 3410–DM–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Tennessee Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that a meeting of the Tennessee Advisory Committee to the Commission will convene by Zoom on Thursday, May 11, 2023, at 12:00 p.m. (CT). The purpose of the meeting is to discuss report drafting for the Committee's project on voting rights.

DATES: The meeting will take place on Thursday, May 11, 2023, at 12:00 p.m. (CST).

ADDRESSES:

Registration Link (Audio/Visual): https://www.zoomgov.com/j/1619073073?pwd=cWM3N0tUQ1M3Wi93Si92QWRERzRjdz09.

Telephone (Audio Only): Dial (833) 568–8864 USA Toll Free; Access Code: 161 907 3073.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno at *vmoreno@usccr.gov* or by phone at 434–515–0204.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the Zoom link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided above for the meeting.

Members of the public are entitled to make comments during the open period

at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be emailed to Victoria Moreno at *vmoreno@usccr.gov.* All written comments received will be available to the public.

Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during the meeting will be available for public viewing as they become available at the *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

Thursday, May 11, 2023, at 12:00 p.m. (CT)

1. Welcome & Roll Call
2. Chair's Comments
3. Vote on Committee Statement
4. Discussion on Report Drafting
5. Committee Business
6. Next Steps
7. Public Comment
8. Adjourn

Dated: April 20, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–08712 Filed 4–24–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Puerto Rico Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a briefing of the Puerto Rico Advisory Committee to the Commission will convene on Wednesday, May 10, 2023, from 9:00 a.m. to approximately 5:00 p.m. Atlantic Time. The purpose of the briefing is to hear from experts, government officials, academics and impacted persons on the topic of the Insular Cases and their impacts on civil rights in Puerto Rico. The briefing is free is charge and is open to the public.

DATES: May 10, 2023, Wednesday; 9:00 a.m. to approximately 5:00 p.m. Atlantic Time.

ADDRESSES: InterAmerican University of Puerto Rico Law School, 170 C. Federico Costas, Hato Rey, 00918, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno, Designated Federal Officer at *vmoreno@usccr.gov,* or by phone at 434–515–0204.

SUPPLEMENTARY INFORMATION: This meeting will be held in Spanish and is open to the public free of charge. To request accommodations, please email *ebohor@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to make comments during the open period towards the end of the briefing. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be emailed to Victoria Moreno at *vmoreno@usccr.gov.* All written comments received will be available to the public.

Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during the meeting will be available for public viewing as they become available at the *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

1. Welcome & Roll Call
2. Briefing on the Insular Cases and Their Impacts on Civil Rights in Puerto Rico
3. Public Comment
4. Adjourn

Dated: April 20, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–08709 Filed 4–24–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

[Docket No. 230412–0098]

Privacy Act of 1974; System of Records

AGENCY: Department of Commerce.

ACTION: Notice of a new system of records.

SUMMARY: The U.S. Department of Commerce (''Department'') is establishing a new system of records to cover the collection and maintenance of records pertaining to the implementation of the Helping American Victims Afflicted by Neurological Attacks Act of 2021 (HAVANA Act). The HAVANA Act provides the authority for the Secretary of Commerce and other agency heads to provide payments to certain individuals who have incurred qualifying injuries to the brain.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this notice will go into effect without further notice on April 25, 2023 unless otherwise revised pursuant to comments received. All routine uses will go into effect on May 25, 2023. Comments must be received on or before May 25, 2023.

ADDRESSES: You may submit comments, identified as pertaining to ''COMMERCE/DEPT–32, Helping American Victims Afflicted by Neurological Attacks Act of 2021 (HAVANA Act) Records,'' by any of the following methods:

- *Mail:* Send to Charles Cutshall, Chief Privacy Officer and Director of Open Government, U.S. Department of Commerce, Office of Privacy and Open Government, 1401 Constitution Ave. NW, Room 61025, Washington, DC 20230.
- *Email:* Send to *privacyact@doc.gov.*

Please submit your comments using only one of these methods. All comments must be submitted in English, or if not, be accompanied by an English translation.

FOR FURTHER INFORMATION CONTACT: Tahira Murphy, Deputy for Departmental Privacy Operations, *privacyact@doc.gov* or (202) 482–8075.

SUPPLEMENTARY INFORMATION: On December 20, 2019, Congress gave authority (Pub. L. 116–94, Division J, Title IX, section 901) to the Department of State to pay benefits to certain individuals for injuries suffered after January 1, 2016 in the Republic of Cuba, the People's Republic of China, or another foreign country designated by the Department of State, in connection with certain injuries designated by the Secretary of State. These benefits were limited to Department of State employees, their dependents and other individuals affiliated with the Department of State.

On January 1, 2021, Congress amended this law (Pub. L. 116–283, div. A, title XI, section 1110), authorizing other federal government agencies (such as the Department of Commerce) to provide benefits to their own employees

for those injuries. These provisions are codified at 22 U.S.C. 2680b.

On October 8, 2021, the ''Helping American Victims Afflicted by Neurological Attacks'' (HAVANA) Act of 2021 became law (Pub. L. 117–46). In this latest Act, Congress authorized federal government agencies to compensate affected current employees, former employees, and their dependents for qualifying injuries to the brain. Section 3 of the HAVANA Act of 2021 removed the requirement in Public Law 116–94, Division J, Title IX, Section 901, that the qualifying injury occur in ''the Republic of Cuba, People's Republic of China, or other foreign country designated by the Secretary of State'' for the purpose of making a payment under the HAVANA Act.

SYSTEM NAME AND NUMBER:

COMMERCE/DEPT–32, Helping American Victims Afflicted by Neurological Attacks Act of 2021 (HAVANA Act) Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

This system is located at the U.S. Department of Commerce, Office of Human Resources Management, 1401 Constitution Ave. NW, Room 5001, Washington, DC 20230.

SYSTEM MANAGER(S):

Chief Human Capital Officer, *AHRITF@doc.gov,* U.S. Department of Commerce, Office of Human Resources Management, 1401 Constitution Ave, NW, Room 5001, Washington, DC 20230.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is authorized by the Helping American Victims Afflicted by Neurological Attacks Act of 2021 (Pub. L. 117–46), codified at 22 U.S.C. 2680b, and the Department's implementing regulations.

PURPOSE(S) OF THE SYSTEM:

The system maintains records essential to the mission of the Department of Commerce, which is committed to protecting its employees and their dependents from injury. Records maintained in this system of record are collected, maintained, and disclosed to make payments to claimants in accordance with the HAVANA Act for qualifying injuries to the brain incurred in connection with war, insurgency, hostile act, terrorist activity, or other incidents designated by the Secretary of State or Secretary of Commerce, as permitted by law, and which were not the result of the willful misconduct of the claimant.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals on whom records are maintained in this system include:

1. ''Covered employees,'' an employee of the Department of Commerce who, on or after January 1, 2016, becomes injured by reason of a qualifying injury to the brain. Covered employees include Department of Commerce employees in the Foreign Service, National Oceanic and Atmospheric Administration Commissioned Corps Officers, and Department of Commerce employees who meet the definition of ''employee'' set forth in 5 U.S.C. 2105(a).

2. ''Covered individuals,'' any former employee of the Department (including retired or separated employees) who, on or after January 1, 2016, becomes injured by a qualifying injury to the brain while they were a covered employee of the Department.

3. ''Covered Dependents,'' a family member of a current or former Department employee who, on or after January 1, 2016, becomes injured by reason of a qualifying injury to the brain while the dependent's sponsor was an employee of the Department.

4. Board-certified physicians responsible for assessing and diagnosing qualify injuries to the brain.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in this system include:

1. Biographic information, including first name, last name, and date of birth.

2. Contact information, including address (*i.e.,* street address, city, state, and zip code), email address, and phone number.

3. Employment information, including current employer, employment status, and other information related to current or former employment with the Department's Foreign and Civil Service or with the National Oceanic and Atmospheric Administration Commissioned Corps, such as duty station.

4. Familial information, including government-issued birth certificate, Consular Report of Birth Abroad, adoption certificates and decrees, guardianship (medical and financial), Power of Attorney (medical and financial), or other documents required to verify the relationship between a covered employee or covered individual and their dependents.

5. Geographical information, including the location and date of an incident. An ''incident'' is defined as a ''qualifying injury to the brain'' under the HAVANA Act. The Department has adopted the standard set forth by the Department of State in its regulations implementing the HAVANA Act. The standard accounts for a variety of observable impacts to an individual, including either a concussion, a penetrating injury, or absent either of those, the ability of an appropriately certified physician to review one of a variety of forms of medical imaging evidence indicating permanent alterations in brain function.

6. Medical information, including (1) information that identifies the individual as having suffered an acute injury to the brain such as, but not limited to, a concussion, penetrating injury, or as the consequence of an event that leads to permanent alterations in brain function as demonstrated by confirming correlative findings on imaging studies (to include computed tomography scan (CT), or magnetic resonance imaging scan (MRI)), or electroencephalogram (EEG); (2) a medical diagnosis of a traumatic brain injury (TBI) that required active medical treatment for 12 months or more; and (3) information that identifies the individual as having suffered acute onset of new persistent, disabling neurologic symptoms as demonstrated by confirming correlative findings on imaging studies (to include CT or MRI), or EEG, or physical exam, or other appropriate testing, and that required active medical treatment for 12 months or more.

7. Benefit information, including whether the Social Security Administration has approved an individual for Social Security Disability Insurance or Supplemental Security Insurance (SSI) benefits.

8. Financial information, including bank account information necessary to disburse payment to eligible individuals.

RECORD SOURCE CATEGORIES:

The sources for the records maintained in this system include:

1. Covered employees;
2. Covered dependents;
3. Covered individuals;
4. Legal representatives or other individuals acting on behalf of covered employees, covered dependents, or covered individuals;
5. Board-certified physicians;
6. Federal and state agencies; and
7. Financial Institutions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under the Privacy

Act of 1974, as amended, 5 U.S.C. 552a(b), records maintained as part of this system of records may be routinely disclosed pursuant to 5 U.S.C. 552a(b)(3), as consistent with the Rehabilitation Act or other laws, regulations, or policies concerning confidential medical information (as applicable), as follows:

1. To the U.S. Department of Labor to determine whether an individual has no reemployment potential.

2. To the U.S. Department of State to verify an individual's prior employment and to determine eligibility.

3. To a state Board of Medicine, or any similar organization, responsible for primary-source public licensing and discipline information to verify the status of a certifying physician's medical license.

4. To a certified physician attesting to an individual's eligibility when necessary to follow up regarding information provided on an individual's application.

5. To a financial institution to process payment to covered individuals and dependents who are eligible for payment in accordance with the HAVANA Act, codified at 22 U.S.C. 2680b, and the Department's implementing regulations.

6. To another federal agency to identify their current and former covered employees, and current and former dependents who reported an anomalous health incident.

7. To the U.S. Department of Defense (DoD) to facilitate covered individuals receiving treatment from DoD medical treatment facilities.

8. To contractors performing or working on a contract for the Federal government when necessary to accomplish an agency function.

9. To oversight authorities responsible for reviewing Departmental programs.

10. To the U.S. Department of Justice (DOJ), or in a proceeding before a court, adjudicative body, or other administrative body which the Department is authorized to appear, when

a. the Department, or any component thereof;

b. any employee of the Department in their official capacity; or

c. any employee of the Department where the DOJ or the Department has agreed to represent the employee; or

d. the United States, when the Department determines that litigation is likely to affect the Department or any of its components;

is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ or the Department is deemed by the Department to be relevant and necessary to the litigation.

11. To the National Archives and Records Administration (NARA) pursuant to its records management and inspection authorities under 44 U.S.C. 2904 and 2906.

12. To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that there has been a breach of the system of records; (2) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

13. To another Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records maintained in this system of records are stored electronically.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The records are retrieved by an individual's name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

These records are currently unscheduled. In accordance with NARA rules codified at 36 CFR 1225.16, we maintain unscheduled records until NARA approves an agency-specific records schedule or publishes a corresponding General Records Schedule.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are protected from unauthorized access and improper use through administrative, technical, and physical security measures employed by the Department. Administrative safeguards include maintenance of written policies, standards, and procedures reinforced by training and periodic auditing. In addition, medical information collected is maintained on separate forms and in separate medical files and is treated as a confidential medical record. Technical security safeguards include restrictions on computer access to authorized individuals who have a legitimate need to know the information; required use of strong passwords that are frequently changed; multi-factor authentication for remote access and access to many network components; use of encryption for certain data types and transfers; and firewalls and intrusion detection applications. Physical safeguards include restrictions on building access to authorized individuals, use of security guard services, and video surveillance.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records maintained in this system of records must submit an access request in accordance with the Department's Privacy Act implementing regulations in 15 CFR part 4, subpart B. The regulations define the procedures for making requests for records in person, not in person, and on behalf of a minor or by a legal guardian.

CONTESTING RECORD PROCEDURES:

Individuals contesting the content of records about themselves contained in this system of records must submit a request for correction or amendment in accordance with the Department's Privacy Act implementing regulations in 15 CFR part 4, subpart B. The regulations define the procedures for making requests for correction or amendment and include what should be submitted with the request.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves must submit a request in accordance with the Department's Privacy Act implementation regulations in 15 CFR part 4, subpart B. The regulations define the procedures for making inquiries and what information should be submitted with the request.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Dated: April 14, 2023.

Notice of New System of Record.

Charles Cutshall,

Department of Commerce, Senior Agency Official for Privacy, Chief Privacy Officer and Director of Open Government.

[FR Doc. 2023–08428 Filed 4–21–23; 11:15 am]

BILLING CODE 3510–17–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC828]

Fisheries of the South Atlantic, Gulf of Mexico, and Caribbean; Southeast Data, Assessment, and Review (SEDAR) Public Meeting

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

ACTION: Notice of the SEDAR Steering Committee Meeting.

SUMMARY: The SEDAR Steering Committee will meet to discuss the SEDAR stock assessment process and assessment schedule. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR Steering Committee will meet Wednesday, May 17, 2023, from 9 a.m. until 5 p.m., Eastern, via webinar. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the SEDAR process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie Neer (see **FOR FURTHER INFORMATION CONTACT** below) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Program Manager, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The SEDAR Steering Committee provides guidance and oversight of the SEDAR stock assessment program and manages assessment scheduling.

The items of discussion for this meeting are as follows:

SEDAR Projects Update
SEDAR Projects Schedule
SEDAR Process Review and Discussions
Other Business

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SEDAR office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: April 20, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–08675 Filed 4–24–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC945]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public online meeting.

SUMMARY: The Economics Subcommittee of the Pacific Fishery Management Council's (Pacific Council) Scientific and Statistical Committee (SSC) will convene an online meeting to review a comparative cost study for the West Coast Groundfish Trawl Catch Share Program. The SSC Economics Subcommittee meeting is open to the public.

DATES: The SSC Economics Subcommittee meeting will be held Thursday, May 11, 2023, from 9 a.m. until 12 p.m. (Pacific Daylight Time) or until business for the day has been completed.

ADDRESSES: The SSC Economics Subcommittee meeting will be conducted as an online meeting. Specific meeting information, including the agenda and directions on how to join the meeting and system requirements, will be provided in the workshop announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Marlene A. Bellman, Staff Officer, Pacific Council; telephone: (503) 820–2414, email: *marlene.bellman@noaa.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the SSC Economics Subcommittee meeting is to review a comparative cost study for the West Coast Groundfish Trawl Catch Share Program. In 2022, NMFS provided the Pacific Council with funds for a contract to look more closely at catch share fishery costs that are borne by industry and NMFS. Pacific Council staff engaged Mr. Darrell Brannan to conduct the work. The cost project covers three broad objectives: (a) documentation of industry concerns and identifying costs related to specific program elements, (b) comparison of those costs to similar catch share programs, and (c) organization and presentation of the information to inform future deliberations.

No management actions will be decided by the meeting participants. The participants' role will be the development of recommendations and reports for consideration by the SSC and the Pacific Council. The Pacific Council and SSC are scheduled to consider the comparative cost study for the West Coast Groundfish Trawl Catch Share Program at their September 2023 meeting in Spokane, Washington.

Although nonemergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act,

provided the public has been notified of the intent of the workshop participants to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: April 20, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–08678 Filed 4–24–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC934]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (MAFMC) will hold a meeting of the Ecosystem and Ocean Planning (EOP) Advisory Panel. See **SUPPLEMENTARY INFORMATION** for agenda details.

DATES: The meeting will be held on Monday, May 15, 2023, from 2 p.m. through 4 p.m.

ADDRESSES: The meeting will take place over webinar with a telephone-only connection option. Details on how to connect to the meeting will be posted at: *www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; website: *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: During this meeting, the EOP Advisory Panel will discuss development of a policy/process for MAFMC review of exempted fishing permit applications for species listed as ecosystem components under the Unmanaged Forage Omnibus Amendment. The Advisory Panel will review background information as well as a summary of an earlier EOP Committee meeting on the same topic. The Advisory Panel will then have the opportunity to provide feedback and input into the development of this policy/process. A detailed agenda and background documents will be made available on the Council's website (*www.mafmc.org*) prior to the meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: April 20, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–08673 Filed 4–24–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC958]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its Pacific Pelagic Fishery Ecosystem Plan (FEP) Plan Team (PT) meeting to discuss fishery management issues and develop recommendations to the Council for future management of pelagic fisheries in the Western Pacific region.

DATES: The Pelagic PT meeting will be held between May 9 and May 11, 2023. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held in a hybrid format with in-person and remote participation (Webex) options available for the members, and public attendance limited to web conference via Webex. In-person attendance for members will be hosted at the Council office, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813. Specific information on joining the meeting, connecting to the web conference and providing oral public comments will be posted on the Council website at *www.wpcouncil.org.* For assistance with the web conference connection, contact the Council office at (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The Pelagic PT meeting will be held on May 9–11, 2023, and run each day from 9 a.m. to 5 p.m. Hawaii Standard Time (HST). Public comment periods will be provided in the agenda. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Agenda for the Pelagic Plan Team Meeting

Tuesday, May 9, 2023, 9 a.m. to 5 p.m. HST

1. Welcome and Introductions
2. Approval of Agenda & Status of Previous Recommendations
3. Review 2022 Annual Stock Assessment and Fishery Evaluation (SAFE) Report Modules

A. Fishery Data Modules

i. American Samoa
ii. Commonwealth of the Northern Mariana Islands
iii. Guam
iv. Hawaii
v. International
vi. Fishery Observations

4. Plan Team Working Group on Bycatch Reporting Updates
   A. Bycatch Summary Improvements for Hawaii Small Boat Pelagics
   B. Status Update on Non-Commercial Module
5. Continued Review 2022 Annual SAFE Report Modules
   A. Ecosystem Chapter
   i. Environmental & Climate Variables
   ii. Habitat section
   iii. Marine Planning section
   iv. Socioeconomics section
   v. Protected Species
6. Online Portal SAFE Report Updates on Protected Species
7. Public Comment

Wednesday, May 10, 2023, 9 a.m. to 5 p.m. HST

8. SAFE Report Discussion
   A. 2022 Report Region Wide Improvements & Recommendations
   B. Other SAFE Report Matters
9. Revising the Council's Pelagic Fisheries Research Plan & Priorities
10. Update on Biological Opinions for the Hawaii and American Samoa Longline Fisheries
11. False Killer Whale Take Reduction Team Meeting Outcomes

12. Electronic Monitoring: Developing Implementation Options & Scenarios
13. Multi-Year Territorial Bigeye Tuna Catch & Allocation Specifications
14. International Fisheries
    A. 2nd Workshop on Tropical Tuna Longline Management
    B. Updates on International Fisheries
15. Feasibility of Stock Assessments for Incidental Pelagic Management Unit Species
16. Public Comment

Thursday, May 11, 2023, 9 a.m. to 5 p.m. HST

17. Follow-up Discussion on Pelagic Plan Team Agenda Items
18. Pelagic Plan Team Recommendations
19. Other Business

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: April 20, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–08677 Filed 4–24–23; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before May 25, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR—Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://Reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') by clicking on the ''Submit Comment'' box next to the descriptive entry for OMB Control No. 3038–0101, at *https://comments.cftc.gov/FederalRegister/PublicInfo.aspx.*

Or by either of the following methods:

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, prescreen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Alexandros Stamoulis, Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, (646) 746–9792; email: *astamoulis@cftc.gov,* and refer to OMB Control No. 3038–0101.

SUPPLEMENTARY INFORMATION:

Title: Registration of Foreign Boards of Trade (OMB Control No. 3038–0101). This is a request for extension of a currently approved information collection.

Abstract: Section 738 of the Dodd-Frank Act amended section 4(b) of the Commodity Exchange Act to provide that the Commission may adopt rules and regulations requiring foreign boards of trade (FBOT) that wish to provide their members or other participants located in the United States with direct access to the FBOT's electronic trading and order matching system to register with the Commission. Pursuant to this authorization, the CFTC adopted a final rule requiring FBOTs that wish to permit trading by direct access to provide certain information to the Commission in applications for registration and, once registered, to provide certain information to meet quarterly and annual reporting requirements. Currently, Part 48 of the Commission's regulations sets forth reporting and/or recordkeeping requirements to ensure registered FBOTs providing for trading by direct access meet statutory and regulatory requirements on an initial and ongoing basis.

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. On January 13, 2023, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 88 FR 2345 (''60-Day Notice''). The Commission did not receive any relevant comments on the 60-Day Notice.

Burden Statement: The Commission is revising its estimate of the burden for this collection for registered FBOTs, by increasing the number of FBOTs to which the burden applies from 23 to 24 FBOTs. The respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 24.

Estimated Average Burden Hours per Respondent: 360 and ⅓ hours.

Estimated Total Annual Burden Hours: 8,648 hours.

Frequency of Collection: When a reportable event occurs and quarterly and annually for required reports.

[1] 17 CFR 145.9.

There are no capital costs or operating and maintenance costs associated with this collection.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: April 20, 2023.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2023–08666 Filed 4–24–23; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF EDUCATION

President's Advisory Commission on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics

AGENCY: President's Advisory Commission on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics, U.S. Department of Education.

ACTION: Announcement of an open meeting.

SUMMARY: This notice sets forth the agenda for the May 10, 2023, meeting of the President's Advisory Commission on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics (Commission) and provides information on how members of the public may attend the meeting and submit written comments pertaining to the work of the Commission. Notice of this meeting is required by the Federal Advisory Committees and is intended to notify the public of its opportunity to attend.

DATES: The meeting of the Commission will be held on May 10, 2023, from 11 a.m. to 5 p.m. Eastern Standard Time.

ADDRESSES: Eisenhower Executive Office Building, 1650 Pennsylvania Avenue, Washington, DC 20504. Members of the public can attend the meeting virtually.

FOR FURTHER INFORMATION CONTACT: Emmanuel Caudillo, Designated Federal Official for the Commission, U.S. Department of Education, 400 Maryland Avenue SW, Room 7E324, Washington, DC 20202, telephone: (202) 453–5529, or email: *Emmanuel.Caudillo@ed.gov.*

SUPPLEMENTARY INFORMATION:

The Commission's Statutory Authority and Function: The Commission is established by Executive Order 14045 (September 13, 2021) and continued by Executive Order 14048 (September 30, 2021). The Commission is also governed by the provisions of 5 U.S.C. Chapter 10, which sets forth standards for the formation and use of advisory committees. The Commission's duties are to advise the President, through the Secretary of Education, on matters pertaining to educational equity and economic opportunity for the Hispanic and Latino community in the following areas: (i) what is needed for the development, implementation, and coordination of educational programs and initiatives at the U.S. Department of Education (Department) and other agencies to improve educational opportunities and outcomes for Hispanics and Latinos; (ii) how to promote career pathways for in-demand jobs for Hispanic and Latino students, including registered apprenticeships, internships, fellowships, mentorships, and work-based learning initiatives; (iii) ways to strengthen the capacity of institutions, such as Hispanic-serving Institutions, to equitably serve Hispanic and Latino students and increase the participation of Hispanic and Latino students, Hispanic-serving school districts, and the Hispanic community in the programs of the Department and other agencies; (iv) how to increase public awareness of and generate solutions for the educational and training challenges and equity disparities that Hispanic and Latino students face and the causes of these challenges; and (v) approaches to establish local and national partnerships with public, private, philanthropic, and nonprofit stakeholders to advance the mission and objectives of this order, consistent with applicable law.

Meeting Agenda: The agenda for the Commission meeting includes the swearing in of members of the Commission; presentations from leaders from the White House, U.S. Department of Education and other federal agencies on topics related to Executive Order 14045; and discussion regarding next steps towards advancing the members' duties as outlined in Executive Order 14045 and referenced in this notice.

Access to the Meeting: Members of the public may register to attend the meeting virtually by completing the link at *https://www.ed.gov/hispanicinitiative* or emailing *WhiteHouseHispanicInitiative@ed.gov* by 5 p.m. EDT on Tuesday, May 9, 2023. Instructions on how to access the meeting will be emailed to members of the public that register to attend the meeting and will be posted to *https://www.ed.gov/hispanicinitiative* by Tuesday, May 9, 2023 by 6 p.m. EDT.

Submission of written public comments: Written comments pertaining to the work of the Commission may be submitted electronically to *WhiteHouseHispanicInitiative@ed.gov.* Include in the subject line: ''Written Comments: Public Comment.'' The email must include the name(s), title, organizations/affiliation, mailing address, email address, and telephone number of the person(s) making the comment. Comments should be submitted as a Microsoft Word document or in a medium compatible with Microsoft Word (not a PDF file) that is attached to the email) or provided in the body of an email message. Please do not send material directly to members of the Commission.

Access to Records of the Meeting: The Department will post the official report of the meeting on the Commission's web page at *https://www.ed.gov/hispanicinitiative* no later than 90 days after the meeting. Pursuant to U.S.C. 1009(b), the public may request to inspect meeting materials and other records of the Commission at 400 Maryland Avenue SW, Washington, DC, by emailing *Emmanuel.Caudillo@ed.gov* or by calling (202) 453–5529 to schedule an appointment.

Reasonable Accommodations: The meeting platform and access code are accessible to individuals with disabilities. If you will need an auxiliary aid or service for the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least one week before the meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You also may access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: Executive Order 14045 (September 13, 2021) and continued by Executive Order 14048 (September 30, 2021).

Donna Harris-Aikens,

Deputy Chief of Staff for Strategy, Office of the Secretary.

[FR Doc. 2023–08692 Filed 4–24–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0069]

Agency Information Collection Activities; Comment Request; REL Pacific Efficacy and Implementation Evaluation of the Secondary Writing Toolkit

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before June 26, 2023.

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–2023–SCC–0069. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, the Department 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 after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Elizabeth Nolan, (312) 730–1532.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: REL Pacific Efficacy and Implementation Evaluation of the Secondary Writing Toolkit.

OMB Control Number: 1850–NEW.

Type of Review: New ICR.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 1,705.

Total Estimated Number of Annual Burden Hours: 416.

Abstract: The current authorization for the Regional Educational Laboratories (REL) program is under the Education Sciences Reform Act of 2002, Part D, Section 174, (20 U.S.C. 9564), administered by the Department of Education, Institute of Education Sciences (IES), National Center for Education Evaluation and Regional Assistance (NCEE). The central mission and primary function of the RELs is to support applied research and provide technical assistance to state and local education agencies within their region (ESRA, Part D, section 174[f]). The REL program's goal is to partner with educators and policymakers to conduct work that is change-oriented and supports meaningful local, regional, or state decisions about education policies, programs, and practices to improve outcomes for students.

Literacy, including writing, is closely tied to student success throughout K–12 education, which impacts high school graduation (National Institute for Literacy, 2008; NCES, 2020) and ultimately, income beyond graduation (US Bureau of Labor Statistics, 2019). Despite the importance of writing to life and learning, teachers report that the training they receive on teaching writing, both prior to entering the field and while teaching, is minimal or insufficient (Graham, 2019). To address this problem, the REL Pacific toolkit development team is developing a Secondary Writing Toolkit to support teachers in implementing Hawai'i evidence-based instructional strategies to improve writing among students in grades 6–8. The toolkit is based on the Teaching Secondary Students to Write Effectively WWC Practice Guide and is being developed in collaboration with district and school partners in Hawai'i.

REL Pacific will design the Toolkit to help teachers improve their writing instruction so that students in Hawai'i become stronger, more effective writers. The Toolkit uses Professional Learning Communities (PLCs) facilitated by one of the teachers in the school (peer facilitator) to help teachers learn new instructional skills. Teachers also have access to instructional resources as part of the Toolkit to support their use of evidence-based strategies in their classrooms.

This study is designed to measure the efficacy and implementation of the REL Pacific-developed toolkit designed to improve writing among students in grades 6–8. The toolkit evaluation team plans to conduct an independent evaluation using a school-level, cluster randomized controlled trial design to assess the efficacy of the school-based professional learning resources included in the toolkit. The evaluation will also assess how teachers and facilitators implement the toolkit to provide context for the efficacy findings and guidance to improve the toolkit and its future use. The evaluation will take place in 40 schools in Hawai'i and focus on all students in grades 6–8. The toolkit evaluation will produce a report for district and school leaders who are considering strategies to improve writing among secondary students. The report will provide guidance on using the Toolkit professional development and resources to help teachers implement the Practice Guide (PG) recommendations.

Dated: April 19, 2023.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–08657 Filed 4–24–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2023–SCC–0070]

Agency Information Collection Activities; Comment Request; NCEE System Clearance for Design and Field Studies 2023–2026

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before June 26, 2023.

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–2023–SCC–0070. 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, the Department 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 after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Michael Fong, 202–245–8407.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: NCEE System Clearance For Design and Field Studies 2023–2026.

OMB Control Number: 1850–0952.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 6,000.

Total Estimated Number of Annual Burden Hours: 3,000.

Abstract: This is a request for a 3-year generic clearance for the National Center for Education Evaluation (NCEE) that will allow it to collect preliminary or exploratory information to aid in study design. The procedures expected to be used include but are not limited to exploratory surveys and interviews, focus groups, cognitive laboratory activities, pilot testing versions of an intervention or data collection approach, small-scale experiments that explore questionnaire design, incentives, or mode, and usability testing.

Dated: April 20, 2023.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–08704 Filed 4–24–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–77–000.
Applicants: SR McNeal, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act of SR McNeal, LLC.
Filed Date: 4/18/23.
Accession Number: 20230418–5252.
Comment Date: 5 p.m. ET 5/9/23.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–126–000.
Applicants: Delta's Edge Solar, LLC.
Description: Delta's Edge Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 4/19/23.
Accession Number: 20230419–5173.
Comment Date: 5 p.m. ET 5/10/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–469–006.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Amendment to Supplemental Information to Amend Effective Date in ER19–469 to be effective 3/31/2024.
Filed Date: 4/19/23.
Accession Number: 20230419–5140.
Comment Date: 5 p.m. ET 5/10/23.

Docket Numbers: ER23–773–000.
Applicants: Pacific Gas and Electric Company.
Description: Refund Report: CCSF Refund Report for missed WPAs (SA 275) to be effective N/A.
Filed Date: 4/19/23.
Accession Number: 20230419–5000.
Comment Date: 5 p.m. ET 5/10/23.

Docket Numbers: ER23–856–000.
Applicants: Pacific Gas and Electric Company.
Description: Refund Report: CCSF Refund Report for missed Service Agreements (SA 275) to be effective N/A.
Filed Date: 4/19/23.
Accession Number: 20230419–5001.
Comment Date: 5 p.m. ET 5/10/23.

Docket Numbers: ER23–1148–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Amendment of CSA, SA No. 6684; Queue No. AD2–096 in Docket No. ER23–1148–000 to be effective 12/31/9998.

Filed Date: 4/18/23.
Accession Number: 20230418–5188.
Comment Date: 5 p.m. ET 5/9/23.

Docket Numbers: ER23–1167–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Request to Defer Action on SA Filing Amend to ISA, SA No. 6804 Queue No. AC2–090 to be effective 12/31/9998.
Filed Date: 4/19/23.
Accession Number: 20230419–5116.
Comment Date: 5 p.m. ET 5/10/23.

Docket Numbers: ER23–1658–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revised ISA, SA No. 6770; Queue Nos. AE2–071/AF1–203 to be effective 3/20/2023.
Filed Date: 4/19/23.
Accession Number: 20230419–5033.
Comment Date: 5 p.m. ET 5/10/23.

Docket Numbers: ER23–1659–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6861; Queue No. AE2–072 to be effective 3/20/2023.
Filed Date: 4/19/23.
Accession Number: 20230419–5040.
Comment Date: 5 p.m. ET 5/10/23.

Docket Numbers: ER23–1661–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: TO Pro Forma Interconnection Agreement to be effective 6/19/2023.
Filed Date: 4/19/23.
Accession Number: 20230419–5088.
Comment Date: 5 p.m. ET 5/10/23.

Docket Numbers: ER23–1662–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2023–04–19_SA 2930 Termination of ITC-Sugar Creek 1st Rev GIA (J419) to be effective 4/20/2023.
Filed Date: 4/19/23.
Accession Number: 20230419–5120.
Comment Date: 5 p.m. ET 5/10/23.

Docket Numbers: ER23–1663–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to WMPA, Service Agreement No. 6082; Queue No. AF1–039 to be effective 6/19/2023.
Filed Date: 4/19/23.
Accession Number: 20230419–5123.
Comment Date: 5 p.m. ET 5/10/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 19, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–08683 Filed 4–24–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas & Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–691–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: Compliance filing: Penalty Crediting Report for 2022 to be effective N/A.
Filed Date: 4/19/23.
Accession Number: 20230419–5034.
Comment Date: 5 p.m. ET 5/1/23.

Docket Numbers: RP23–692–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: § 4(d) Rate Filing: Fuel Tracker Filing 4/19/23 to be effective 6/1/2023.
Filed Date: 4/19/23.
Accession Number: 20230419–5084.
Comment Date: 5 p.m. ET 5/1/23.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 19, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–08682 Filed 4–24–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southeastern Power Administration

Revision to Power Marketing Policy Cumberland System of Projects

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of proposed revision to power marketing policy.

SUMMARY: Pursuant to its Procedure for Public Participation in the Formulation of Marketing Policy, published in the **Federal Register** on July 6, 1978, Southeastern Power Administration (Southeastern) published on October 21, 2021, a notice of intent to revise its power marketing policy to include provisions regarding renewable energy certificates (RECs) from its Cumberland System of Projects. The current power marketing policy was published on August 5, 1993, for the Cumberland System (System) and is reflected in contracts for the sale of system power, which are maintained in Southeastern's headquarters office. The following is the proposed revision to the Cumberland System Power Marketing Policy to include a procedure for distribution of RECs to Preference Customers. Southeastern solicits written comments in formulating the final marketing policy revision.

DATES: A public information and comment forum will be held on June 29, 2023 at 11 a.m. via a virtual web based meeting to allow maximum participation. Persons desiring to attend the forum should notify Southeastern by June 22, 2023, so that a list of forum participants can be prepared. Persons desiring to speak at the forum should specify this in their notification to Southeastern; others may speak if time permits. Written comments are due July 14, 2023, fifteen (15) days after the scheduled comment forum.

ADDRESSES: Written comments should be submitted to: Virgil G. Hobbs III,

Administrator, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–6711, and emailed to *comments@sepa.doe.gov.* The public information and comment forum for the revision of the Cumberland System Power marketing policy to include provisions for RECs will be by Microsoft Teams. Please register your intent to attend, including name, address, phone number, and email address, with Southeastern's Legal Assistant, Karen Fitzpatrick at *karen.fitzpatrick@sepa.doe.gov,* to receive updates on the meeting status of the comment forum.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon IV, General Counsel, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, Georgia 30635. Telephone: (706) 213–3800. Email: *leon.jourolmon@sepa.doe.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to its ''Procedure for Public Participation in Formulation of Marketing Policy'' (43 FR 29186), Southeastern published a ''Notice of Issuance of Final Power Marketing Policy, Cumberland System of Projects'' in the **Federal Register** on August 5, 1993 (58 FR 41762). The policy establishes the marketing area for system power and addresses the utilization of area utility systems for essential purposes. The policy also addresses wholesale rates, resale rates, and conservation measures, but does not address RECs. Under Section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), Southeastern is responsible for the transmission disposition of electric power and energy from reservoir projects operated by the Department of the Army. Furthermore, Southeastern must transmit and dispose of such power and energy in such manner as to encourage the most widespread use at the lowest possible rates consistent with sound business principles. Rate schedules are drawn to recover all costs associated with producing and transmitting the power in accordance with repayment criteria.

Southeastern began the development of a REC distribution process at the request of customers in the Kerr-Philpott System. To expand the REC distribution to additional customers, Southeastern has begun to develop a process for REC distribution in the Cumberland System. The purpose of the distributions is to provide customers with a product that the customers have asked to receive, which will add value to the green, renewable hydropower already delivered. The revisions will not change the Administrator's prior determinations regarding power allocation within the System marketing area.

All documents introduced at the public information and comment forum, and all comments, questions and answers will be available for inspection and copying in accordance with the Freedom of Information Act (5 U.S.C. 552).

Public Notice and Comment

On October 21, 2021, Southeastern published in the **Federal Register** a ''Notice of Intent to Revise Power Marketing Policy Cumberland System of Projects'' (86 FR 58260) to revise its marketing policy by including provisions regarding RECs from the System. The notice requested that written comments and proposals be submitted on or before December 20, 2021. Southeastern received no public comments.

Proposed Revision to the Power Marketing Policy

The System consists of nine projects: Barkley, Center Hill, Cheatham, Cordell Hull, Dale Hollow, Laurel, Old Hickory, J. Percy Priest, and Wolf Creek. The power from the projects is currently marketed to Preference Customers located in the service areas of the Tennessee Valley Authority, Big Rivers Electric Corporation, Duke Energy Progress, East Kentucky Power Cooperative, Kentucky Utilities, Municipal Electric Agency of Mississippi, Mississippi Delta Energy Agency, the seven-member Cooperative Energy currently receiving Cumberland power, and Southern Illinois Power Cooperative.

Southeastern proposes to revise the Power Marketing Policy for the System to include the following additional provisions for RECs associated with hydroelectric generation:

Renewable Energy Certificates: The M–RETS Tracking System creates and tracks certificates reporting generation attributes, by generating unit, for each megawatt-hour (MWh) of energy produced by registered generators. The System projects are registered generators within M–RETS. The RECs potentially satisfy Renewable Portfolio Standards, state policies, and other regulatory or voluntary clean energy standards in a number of states. Southeastern has subscribed to M–RETS and has an account in which RECs are collected and tracked for each MWh of energy produced from the System. Within M–RETS, certificates can be transferred to other M–RETS subscribers or to a third-party tracking system.

M–RETS creates a REC for every MWh of renewable energy produced by registered generators, tracks the life cycle of each REC created, and ensures against any double-counting or double-use of each REC. These RECs may be used by electricity suppliers and other energy market participants to comply with relevant state policies and regulatory programs and to support voluntary ''green'' electricity markets.

Southeastern proposes distribution of M–RETS-created RECs to Preference Customers with allocations of power from the System.

REC Distribution: M–RETS (or a successor application) will be the transfer mechanism for all RECs related to the System. Southeastern shall maintain an account with M–RETS and collect RECs from the generation at the System projects. Southeastern will verify the total amount of RECs each month. Preference Customers with an allocation of power from the System are eligible to receive RECs by transfer from Southeastern's M–RETS account to their M–RETS account or that of their agent. M–RETS (or a successor application) will be the transfer mechanism for all RECs related to the Kerr-Philpott System. Any further transfer, sale use, or trade transaction would be the sole responsibility of a Preference Customer. Transfers to each customer will be based on the customer's monthly invoices during the same three-month period (quarter). Where applicable, RECs will be project-specific based on the customer's contractual arrangements. Customers receiving energy under the TVA/TVPPA contract will receive their distributions pursuant to the percentages in TVA Area Preference Customer 1978 Load document (revised March 2022).

All RECs distributed by Southeastern shall be transferred within forty-five days of the end of a quarter. Each customer must submit to Southeastern, by the tenth business day after the quarter, any notice of change to M–RETS account or agent. Any REC transfers that were not claimed or if a transfer account was not provided to Southeastern will be forfeited if they become nontransferable as described in the M–RETS terms of service, procedures, policies, or definitions of reporting and trading periods, or any subsequent rules and procedures for transfers as established.

The initial transfer process in M–RETS will be accomplished by the sixtieth day after the end of the first completed quarter subsequent to publication of the final policy revision. Any balance of RECs that exist in Southeastern's M–RETS account, other

than the first quarter after policy revision publication, may also be transferred to Preference Customers according to the customer's invoiced energy at the time of the REC creation.

Rates: No rates shall be established by Southeastern for RECs transferred to Preference Customers. Any cost to Southeastern, such as the M–RETS subscription, will be incorporated into marketing costs and included in recovery through the energy and capacity rates of the System.

Signing Authority

This Department of Energy document was signed on April 17, 2023, by Virgil G. Hobbs III, Administrator, Southeastern Power Administration, 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 April 19, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–08633 Filed 4–24–23; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2023–0070; FRL–10841–03–OCSPP]

Pesticide Product Registration; Receipt of Applications for New Active Ingredients March 2023

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before May 25, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2023–0070, through the *Federal eRulemaking Portal* at *https://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Charles Smith, Biopesticides and Pollution Prevention Division (BPPD) (7511M); main telephone number: (202) 566–1400; email address: *BPPDFRNotices@epa.gov*. The mailing address for this contact person is Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets*.

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications. For actions being evaluated under EPA's public participation process for registration actions, there will be an additional opportunity for public comment on the proposed decisions. Please see EPA's public participation website for additional information on this process (*https://www.epa.gov/pesticide-registration/public-participation-process-registration-actions*).

Notice of Receipt—New Active Ingredients

1. *File Symbol:* 94554–R. *Docket ID number:* EPA–HQ–OPP–2023–0180. *Applicant:* Agri-Organic, LLC., P.O. Box 7748, Bloomfield Township, MI 48302. *Product name:* AOMMA-Agro Crop Protection. *Active ingredient:* Extracts of noni fruit and noni leaves (*Morinda citrifolia*); fungicide, insecticide; *Morinda citrifolia leaf extract* at 0.55% and *Morinda citrifolia fruit extract at 0.45%*. *Proposed classification/Use:* Fungicide, insecticide. *Contact:* BPPD.

2. *File Symbol:* 101966–E. *Docket ID number:* EPA–HQ–OPP–2023–0183. *Applicant:* FytoFend, LLC, 2915 Ogletown Road Newark, DE 19713. *Product name:* Fyto11. *Active ingredient:* COS–OGA; fungicide, plant growth regulator; COS–OGA at 1.04%. *Proposed use:* Fungicide, insecticide. *Contact:* BPPD.

3. *File Symbol:* 101966–R. *Docket ID number:* EPA–HQ–OPP–2023–0183. *Applicant:* FytoFend, LLC, 2915 Ogletown Road Newark, DE 19713. *Product name:* COS–OGA MUP. *Active ingredient:* COS–OGA; manufacturing use product for formulation into fungicide, insecticide and plant growth regulators at 2.28%. *Proposed use:* Manufacturing use product. *Contact:* BPPD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: April 14, 2023.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2023–08690 Filed 4–24–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 137516]

Open Commission Meeting Thursday, April 20, 2023

April 13, 2023.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, April 20, 2023, which is scheduled to commence at 10:30 a.m. in the Commission Meeting Room of the Federal Communications Commission, 45 L Street NE, Washington, DC.

While attendance at the Open Meeting is available to the public, the FCC headquarters building is not open access and all guests must check in with and be screened by FCC security at the main entrance on L Street. Attendees at the Open Meeting will not be required to have an appointment but must otherwise comply with protocols outlined at: *www.fcc.gov/visit.* Open Meetings are streamed live at: *www.fcc.gov/live* and on the FCC's YouTube channel.

Item No.	Bureau	Subject
1	Office of Engineering and Technology	*Title:* Promoting Efficient Use of Spectrum and Opportunities for New Services (ET Docket No. 23–122); Promoting Efficient Use of Spectrum through Improved Receiver Interference Immunity Performance (ET Docket No. 22–137). *Summary:* The Commission will consider a Policy Statement intended to help guide Commission decision-making and stakeholder action to promote efficient co-existence between incumbent and new services. The Policy Statement promotes a balanced and comprehensive approach to spectrum management that holistically considers both transmitter and receiver components of wireless systems.
2	Office of International Affairs	*Title:* Review of International Section 214 Authorizations to Assess Evolving Risks (IB Docket No. 23–119); Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules (MD Docket No. 20–270). *Summary:* The Commission will consider an Order and Notice of Proposed Rulemaking that would take another important step to protect the nation's telecommunications infrastructure from threats in an evolving national security and law enforcement landscape by proposing comprehensive changes to the Commission's rules that allow carriers to provide international telecommunications service pursuant to section 214 of the Communications Act of 1934, as amended.
3	Space	*Title:* Facilitating Satellite Broadband Competition (IB Docket No. 21–456). *Summary:* The Commission will consider a Report and Order and Further Notice of Proposed Rulemaking that would revise rules for spectrum sharing among new satellite broadband constellations. The rule revisions would clarify protection obligations between non-geostationary satellite orbit, fixed-satellite service systems to facilitate the deployment of these next generation systems, including new competitors.
4	Office of Engineering and Technology	*Title:* Amendment of the Commission's Rules Regarding Implementation of the Final Acts of the World Radiocommunication Conference (Sharm el-Sheikh, 2019) (WRC–19), Other Allocation Issues, and Related Rule Updates (ET Docket No. 23–121); Amendment of the Commission's Rules Regarding Implementation of the Final Acts of the World Radiocommunication Conference (Geneva, 2015) (WRC–15), Other Allocation Issues, and Related Rule Updates (ET Docket No. 23–120); Amendment of Parts 2 and 97 of the Commission's Rules Regarding Implementation of the Final Acts of the World Radiocommunication Conference (Geneva, 2015) To Allocate the Band 5351.5–5366.5 kHz to the Amateur Radio Service; (RM–11785). *Summary:* The Commission will consider an Order to make updates to the International Allocation Table to reflect the International Telecommunication Union Radio Regulations (Edition of 2020) and make other non-substantive, editorial revisions. The Commission will also consider a Notice of Proposed Rulemaking that would seek comment on implementing certain of the remaining radiofrequency allocation decisions from the *2015 World Radiocommunication Conference.* The NPRM would propose allocation changes and related updates to service rules.
5	Public Safety and Homeland Security	*Title:* Wireless Emergency Alerts (PS Docket No. 15–91); Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System (PS Docket No. 15–94). *Summary:* The Commission will consider a Further Notice of Proposed Rulemaking that would increase the accessibility, performance, and functionality of Wireless Emergency Alerts, including greater accessibility for people with disabilities and through multilingual alerting.
6	Wireline Competition	*Title:* Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage (WC Docket No. 18–155). *Summary:* The Commission will consider a Second Report and Order, which would modify its Access Stimulation Rules to close a perceived loophole exploited by opportunistic access-stimulating entities to continue to inflate access charges paid by interexchange carriers. The Order would make this inefficient practice less attractive to arbitrageurs and help prevent interexchange carriers' end-user customers from bearing costs for services they may not even use.

Item No.	Bureau	Subject
7	Media	*Title:* Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations (MB Docket No. 03–185); Update of Part 74 of the Commission's Rules Related to Low Power Television and Television Translator Stations (MB Docket No. 22–261). *Summary:* The Commission will consider an Order that would amend its Part 74 rules for low-power television and television translators to remove obsolete rules for analog TV operations.

* * * * *

The meeting will be webcast at: *www.fcc.gov/live.* Open captioning will be provided as well as a text only version on the FCC website. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530.

Press Access—Members of the news media are welcome to attend the meeting and will be provided reserved seating on a first-come, first-served basis. Following the meeting, the Chairwoman may hold a news conference in which she will take questions from credentialed members of the press in attendance. Also, senior policy and legal staff will be made available to the press in attendance for questions related to the items on the meeting agenda. Commissioners may also choose to hold press conferences. Press may also direct questions to the Office of Media Relations (OMR): *MediaRelations@fcc.gov.* Questions about credentialing should be directed to OMR.

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500. Audio/Video coverage of the meeting will be broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live.*

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2023–08625 Filed 4–24–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 137517]

Deletion of Items From April 20, 2023 Open Meeting

April 19, 2023.

The following items were adopted by the Commission and deleted from the list of items scheduled for consideration at the Thursday, April 20, 2023, Open Meeting. Item #4 was adopted on April 18, 2023. Item #7 was adopted and released on April 17, 2023. Both items were previously listed in the Commission's Sunshine Notice on Thursday, April 13, 2023.

4	Office of Engineering and Technology	*Title:* Amendment of the Commission's Rules Regarding Implementation of the Final Acts of the World Radiocommunication Conference (Sharm el-Sheikh, 2019) (WRC–19), Other Allocation Issues, and Related Rule Updates (ET Docket No. 23–121); Amendment of the Commission's Rules Regarding Implementation of the Final Acts of the World Radiocommunication Conference (Geneva, 2015) (WRC–15), Other Allocation Issues, and Related Rule Updates (ET Docket No. 23–120); Amendment of Parts 2 and 97 of the Commission's Rules Regarding Implementation of the Final Acts of the World Radiocommunication Conference (Geneva, 2015) To Allocate the Band 5351.5–5366.5 kHz to the Amateur Radio Service; (RM–11785). *Summary:* The Commission will consider an Order to make updates to the International Allocation Table to reflect the International Telecommunication Union Radio Regulations (Edition of 2020) and make other non-substantive, editorial revisions. The Commission will also consider a Notice of Proposed Rulemaking that would seek comment on implementing certain of the remaining radiofrequency allocation decisions from the *2015 World Radiocommunication Conference.* The NPRM would propose allocation changes and related updates to service rules.
7	Media	*Title:* Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations (MB Docket No. 03–185); Update of Part 74 of the Commission's Rules Related to Low Power Television and Television Translator Stations (MB Docket No. 22–261). *Summary:* The Commission will consider an Order that would amend its Part 74 rules for low-power television and television translators to remove obsolete rules for analog TV operations.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2023–08628 Filed 4–24–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket Nos. 03–123 and 10–51; DA 23–289; FRS 137191]

Comment Sought on GlobalVRS Request for Exogenous VRS DeafBlind Costs

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comment.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on the petition of ASL Services Holdings, LLC dba GlobalVRS (GlobalVRS) for exogenous cost reimbursement for the provision of Video Relay Service (VRS) to people who are deafblind. Specifically, GlobalVRS seeks reimbursement from the Telecommunications Relay Services (TRS) Fund for costs associated with the development of its call distribution platform, outreach, and other costs associated with its provision of VRS to individuals who are deafblind.

DATES: Comments on the Petition must be filed on or before May 9, 2023. Reply comments must be filed on or before May 19, 2023.

ADDRESSES: Comments and reply comments may be filed, identified by CG Docket Nos. 03–123 and 10–51, using the Commission's Electronic Comment Filing System (ECFS).

- *Electronic Filers:* Comments and reply comments may be filed electronically using the internet by accessing the ECFS: *https://www.fcc.gov/ecfs/filings/standard.*
- *Paper Filers:*

○ Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

○ Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

○ Currently, the Commission does not accept any hand delivered or messenger delivered filings as a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. In the event that the Commission announces the lifting of COVID–19 restrictions, a filing window will be opened at the Commission's office located at 9050 Junction Drive, Annapolis Junction, MD 20701.

○ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

○ U.S. Postal Service first-class, Express, and Priority mail may be addressed to 45 L Street NE, Washington, DC 20554.

○ During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

FOR FURTHER INFORMATION CONTACT: Ross Slutsky, Consumer and Governmental Affairs Bureau, email: *Ross.Slutsky@fcc.gov* or Michael Scott, Consumer and Governmental Affairs Bureau at (202) 418–1264 or email: *Michael.Scott@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Public Notice,* DA 23–289, in CG Docket Nos. 03–123 and 10–51, released on April 4, 2023. The full text of the Petition can be accessed online via the Commission's Electronic Comment Filing System at *https://www.fcc.gov/ecfs/document/10321175009780/1.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at: (202) 418–0530.

Ex Parte Rules. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Synopsis

In its *2017 VRS Compensation Order,* published at 82 FR 39673, August 22, 2017, the Commission authorized VRS providers to request exogenous cost recovery from the Interstate TRS Fund. In its Petition, GlobalVRS seeks reimbursement from the TRSFund for costs associated with the development of its call distribution platform, outreach, operations, and other costs associated with its provision of VRS to individuals who are deafblind.

Federal Communications Commission.

Eliot Greenwald,

Deputy Chief, Disability Rights Office, Consumer and Governmental Affairs Bureau.

[FR Doc. 2023–08638 Filed 4–24–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[Notice 2023–05]

Memorandum of Understanding Regarding the Enforcement of Federal Campaign Finance Laws

AGENCY: Federal Election Commission (FEC), Department of Justice (DOJ).

ACTION: Notification of Memorandum of Understanding (MOU).

SUMMARY: The purpose of the below MOU is to promote the enforcement of the Federal campaign finance laws and to establish guidelines for the FEC and the DOJ to engage in parallel proceedings, share information in

appropriate circumstances, and otherwise properly advance the missions of both agencies subject to all relevant legal and ethical constraints informed by mutual respect of the independence of each agency.

DATES: The MOU is effective April 25, 2023.

FOR FURTHER INFORMATION CONTACT: Charles Kitcher, Associate General Counsel for Enforcement, Office of General Counsel, Federal Election Commission, 1050 First Street NE, Washington, DC 20463, (202) 694–1650 or (800) 424–9530; Robert J. Heberle, Director, Election Crimes Branch, Public Integrity Section, Criminal Division, U.S. Department of Justice, 1301 New York Ave. NW, Washington, DC 20530, (202) 514–1412.

SUPPLEMENTARY INFORMATION: The text of the Memorandum of Understanding is as follows:

Memorandum of Understanding Between the Federal Election Commission and the United States Department of Justice Regarding Enforcement of the Federal Campaign Finance Laws

Purpose

1. This Memorandum of Understanding (''MOU'') sets forth an agreement between the Federal Election Commission (''Commission'') and the United States Department of Justice (''Department'') concerning their respective enforcement responsibilities under the Federal Election Campaign Act of 1971, as amended, 52 U.S.C. 30101–45, the Presidential Election Campaign Fund Act, 26 U.S.C. 9001–12, and the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031–42 (collectively, the ''Acts'').

2. The purpose of this MOU is to promote the enforcement of the Federal campaign finance laws and to establish guidelines for the Commission and the Department to engage in parallel proceedings, share information in appropriate circumstances, and otherwise properly advance the missions of both agencies subject to all relevant legal and ethical constraints informed by mutual respect of the independence of each agency.

Authority

3. The Commission has exclusive jurisdiction over civil enforcement of the Acts. 52 U.S.C. 30106(b)(l), 30107(e). The Commission's civil enforcement authority extends to knowing and willful violations. *Id.* 30109(a)(5)(B), (C). The Commission also administers the Acts and formulates policy with respect to the Acts, including issuing formal interpretations of the Acts and promulgating regulations to implement and clarify the Acts. 52 U.S.C. 30106(b)(l); 26 U.S.C. 9009, 9039. The Commission may initiate civil enforcement proceedings without a referral to or from the Department.

4. The Department has exclusive jurisdiction over criminal enforcement of the federal campaign finance laws. *See generally* 28 U.S.C. 516 (reserving to the Department the conduct of all litigation in which the United States, an agency, or officer thereof is a party ''[e]xcept as otherwise authorized by law''). The Department also has jurisdiction over related criminal offenses including, but not limited to: conspiracy in violation of 18 U.S.C. 371; making false statements within the jurisdiction of a federal agency in violation of 18 U.S.C. 1001; obstruction of agency proceedings in violation of 18 U.S.C. 1505 & 1519; and perjury in violation of 18 U.S.C. 1621. The Department may initiate criminal investigations and prosecutions without a referral to or from the Commission.

Civil and Criminal Enforcement

Cooperation and Information Sharing Generally

5. The Department and the Commission agree to assist each other in fulfilling their respective statutory responsibilities and to cooperate, consistent with all legal restrictions, to further their respective enforcement activities.

6. The Commission may share information with the Department, which is an appropriate law enforcement agency, regarding any Commission enforcement proceeding at any point in that process, either upon written request of the Department specifying the information sought or when, in the absence of such request, the Commission concludes that sharing such information is appropriate and consistent with paragraph 2 of this MOU. *See* 52 U.S.C. 30107(a)(9). In addition, as set forth in 52 U.S.C. 30109(a)(5)(C), if the Commission, by 4 affirmative votes, determines that there is probable cause to believe that a knowing and willful violation of the Acts has occurred or is about to occur, it may refer such apparent violation to the Department without regard to any limitations set forth in 52 U.S.C. 30109(a)(4)(A).

7. The Department may share with the Commission information obtained during a criminal investigation or prosecution relating to possible violations of the Acts when appropriate and consistent with applicable law, the integrity of the investigation or prosecution, and paragraph 2 of this MOU. To enable such sharing, the Department may, where appropriate, redact materials that otherwise may not be disclosed. Where the alleged violation warrants the impaneling of a grand jury, information regarding the grand jury investigation will not be disclosed to the Commission, pursuant to Federal Rule of Criminal Procedure 6(e), absent court authorization to provide material to the Commission preliminary to or in connection with a judicial proceeding under Federal Rule of Criminal Procedure 6(e)(3)(E)(i). Further, consistent with the obligations in this paragraph and paragraph 5, if the Department concludes that it will not pursue criminal prosecution of a matter that may involve a violation of the Acts, the Department may apprise the Commission of the matter so that the Commission may consider any further action that may be appropriate under the circumstances.

8. When appropriate, and upon request of the Department, the Commission may make Commission staff available to provide information and to testify in federal criminal proceedings, provided, however, that the Department shall not offer Commission staff as expert witnesses without prior permission from the Commission. It is the understanding of the Department and the Commission that absent exceptional circumstances, Commission staff witnesses will not testify as expert witnesses.

Parallel Proceedings and Investigations

9. The Department and the Commission may engage in parallel proceedings—that is, concurrent investigations or administrative proceedings related to the same parties or conduct. The Department and the Commission may confer in such instances where appropriate and consistent with paragraph 2 of this MOU, subject to any applicable legal restrictions. While the Department and the Commission may engage in parallel proceedings and share information where appropriate, the Department and the Commission do not intend to engage in joint fact-gathering, joint investigation or litigation strategy, or joint charging determinations. For purposes of criminal litigation, the Department does not consider the Commission to be a part of the prosecution team or to be acting on behalf of the prosecution in any case.

10. The Department may ask the Commission to hold in abeyance an administrative Commission enforcement matter during a parallel criminal

investigation. The Commission will consider any such written request and may agree to abate designated Commission enforcement proceedings for an appropriate period of time when deemed appropriate by the Commission. The Department recognizes that periods of abatement of Commission enforcement proceedings have the potential to adversely affect the Commission's interests in such matters. Accordingly, in such instances the Department shall assist the Commission in furthering its independent mission within applicable limitations periods by providing the Commission with information it collects during the course of its criminal investigation relating to an abated matter or matters, subject to any applicable legal prohibitions and handling requirements, at the earliest reasonable opportunity, consistent with the integrity of the criminal investigation and any resulting prosecution. During an abatement, the Department and the Commission will confer as necessary and appropriate in order to keep the Commission apprised about the ongoing need for the abatement, including whether the abatement can be concluded or whether the Department requests that it be maintained.

11. The Department recognizes that open Commission enforcement matters are subject to the requirements of 52 U.S.C. 30109(a)(12)(A), which provides that any notification or investigation made under 52 U.S.C. 30109 shall not be made public by the Commission or by any person without the written consent of the person receiving such notification or the person with respect to whom such investigation is made. In addition, 52 U.S.C. 30109(a)(4)(B)(i) provides that no action by the Commission or any person, and no information derived, in connection with any conciliation attempt by the Commission under 52 U.S.C. 30109(a)(4)(A) may be made public by the Commission without the written consent of the respondent and the Commission. Unlike 52 U.S.C. 30109(a)(12)(A), the application of 52 U.S.C. 30109(a)(4)(B)(i) remains in effect even after the Commission closes a matter and makes it public. The Department will establish and maintain necessary and appropriate safeguards to protect information provided by the Commission falling within the scope of information that shall not be made public in accordance with this paragraph. The Commission recognizes that the Department has obligations under *Brady* v. *Maryland,* 373 U.S. 83 (1963); the Jencks Act, 18 U.S.C. 3500; and Federal Rule of Criminal Procedure 16 that may require it to provide information about an open Commission matter in conjunction with a criminal matter. Prior to revealing in open court or publicly available court filings, or providing to any person outside of the Department, any information protected by 52 U.S.C. 30109(a)(12)(A) as described in this paragraph, the Department will call to the court's attention any potential conflict between the Department's obligations under *Brady* v. *Maryland,* the Jencks Act, and Federal Rule of Criminal Procedure 16 and the requirement under 52 U.S.C. 30109(a)(12)(A) that open Commission enforcement matters not be made public. Any pleadings containing information protected by 52 U.S.C. 30109(a)(12)(A) shall be filed by the Department under seal, unless otherwise directed by the court. To any extent that the Department must transmit material protected by 52 U.S.C. 30109(a)(12)(A) outside the Department in connection with a criminal matter, it will seek to maintain the non-public nature of such information by seeking protective orders or other comparable measures.

12. Unless prohibited by law, the Department and the Commission will each endeavor to notify the other, in writing, of any legally enforceable demand or request made through a subpoena or court order for nonpublic information or documents in the possession of one agency but created by the other. If the request is made pursuant to the Freedom of Information Act (''FOIA''), 5 U.S.C. 552, or is subject to the Privacy Act, 5 U.S.C. 552a, the Department and the Commission will endeavor to refer the records to the agency that created the documents or consult with that agency before releasing its documents, as appropriate. The Department and the Commission also agree to assert all applicable FOIA or Privacy Act exemptions, litigation privileges, and any other applicable privileges on behalf of the other agency to the extent permitted by law.

13. If a matter pending before the Commission involves a finding by the Commission under 52 U.S.C. 30109(a)(2) that there is reason to believe there has been a knowing and willful violation of the Federal Election Campaign Act of 1971, as amended, exceeding the monetary thresholds for criminal enforcement, *see* 52 U.S.C. 30109(d)(1), the Commission will consider whether the matter also raises possible criminal violations outside of the Commission's jurisdiction, such as those identified in paragraph 4 above, that should be reported to the Department pursuant to 52 U.S.C. 30107(a)(9). In cases in which the Commission determines that such reporting is appropriate, it will promptly inform the Department of the existence of the Commission's matter or matters, inform the Department that the Commission has made a reason to believe finding covered by this paragraph, and also report the existence of the possible criminal violations. Following receipt of such notice, and consistent with paragraph 6, above, the Department may request that the Commission provide the Department information it has collected relating to such matter, subject to any applicable legal prohibitions, at the earliest reasonable opportunity. The Commission and the Department mutually recognize that all violations of the Acts, even those committed knowingly and willfully, may not be proper subjects for prosecution as criminal offenses. For the most beneficial and effective enforcement of the Acts, those knowing and willful violations which are significant and substantial, and which may be described as aggravated in the intent in which they were committed, or in the monetary amount involved should be referred by the Commission to the Department for criminal prosecution review. Within this framework, numerous factors will frequently affect the Commission's determination to share information with the Department or make a report or referral, including the repetitive nature of the acts, the existence of a practice or pattern, prior notice, and the extent of the conduct in terms of geographic area, persons, and monetary amounts, among many other proper considerations.

14. If the Department publicly charges a violation of the Acts, or a conspiracy to violate the Acts, or another crime relating to the Commission such as making a false statement to the Commission, in any court, it shall promptly alert the Commission of the pendency of the matter. Following receipt of such notice, and consistent with paragraph 7, above, the Commission may request that the Department provide information about the matter obtained during the Department's criminal investigation or prosecution.

Related Offenses

15. Materially false information, records, or statements that are intentionally made or submitted to the Commission may constitute violations of federal criminal law under 18 U.S.C. 371, 1001, 1505, 1519, 1621, and other statutes. If the Commission receives or

develops information related to the making or submission of materially false information, records, or statements in a matter within the Commission's jurisdiction through a Commission function, administrative proceeding, investigation, or otherwise, the Commission may report such apparent violations to the Department pursuant to 52 U.S.C. 30107(a)(9), including as set forth above in paragraphs 6 and 2. In the case of such reporting, the Department will evaluate and, in its discretion, prosecute potential criminal offenses arising from that conduct. In the event that the Department requests additional information in furtherance of any such criminal investigation or prosecution by the Department, it may request that the Commission provide such information, consistent with and as set forth above in paragraph 6.

Settlements and Dispositions

16. The Department and the Commission recognize the benefits of global settlements, that is, settlements that simultaneously resolve related criminal and civil violations of the Acts concerning the same underlying unlawful conduct, and may seek to enter into global settlements when appropriate under procedures consistent with the interests and ethical obligations of the Department and the Commission.

17. If a subject or defendant in a criminal investigation or prosecution requests a global settlement, the Department and the Commission may confer as appropriate to determine whether criminal and civil liability arising from the same or related transactions can be resolved in a global settlement.

18. In cases in which no global settlement is reached, the Department will seek to include in any plea agreement concerning conduct that may constitute a violation of the Acts a provision acknowledging that nothing in the agreement waives or limits in any way the Commission's authority to seek civil penalties or other administrative remedies for violations of the Acts. The Commission and the Department agree, however, that the absence of any such disclaimer in a plea agreement is not intended to constitute a waiver of, or otherwise limit the Commission's ability to engage in, any civil enforcement activity concerning an applicable violation of the Acts.

Points of Contact

19. The Chief of the Public Integrity Section, the Principal Deputy Chief of the Public Integrity Section, and the Director and the Deputy Director of the Election Crimes Branch of the Public Integrity Section, all of the Criminal Division of the Department, shall be the Commission's points of contact for the Department's obligations under this MOU, with the Director of the Election Crimes Branch being the primary contact.

20. The General Counsel for the Commission, the Associate General Counsel and the Deputy Associate General Counsels for Enforcement, and the Associate General Counsel for Litigation in the Office of General Counsel shall be the Department's points of contact for the Commission's obligations under this MOU, with the Associate General Counsel for Enforcement being the primary contact.

Repeal of 1977 Memorandum

21. This MOU repeals and supersedes the 1977 Memorandum of Understanding between the Commission and the Department regarding the handling of violations of the federal campaign finance laws.

Effective Date

22. The effective date of this MOU will be the date the executed MOU is published in the **Federal Register**.

Limitation; No Reliance

23. This MOU applies only to the relationship between the Commission and the Department. It is not intended to confer, nor does it confer, any procedural or substantive rights on any person in any matter before the Department, the Commission, or any court or agency and may not be relied upon for that purpose, or any other purpose, by any person not a party to this MOU.

Dated: April 14, 2023.

For the United States Department of Justice.

Kenneth A. Polite, Jr.,

Assistant Attorney General, Criminal Division.

Dated: April 19, 2023

For the Federal Election Commission.

Lisa J. Stevenson,

Acting General Counsel.

Dated: April 19, 2023.

On behalf of the Commission,

Dara Lindenbaum,

Chair, Federal Election Commission.

[FR Doc. 2023–08639 Filed 4–24–23; 8:45 am]

BILLING CODE 6715–01–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)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

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 May 10, 2023.

A. Federal Reserve Bank of Philadelphia (William Spaniel, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521. Comments can also be sent electronically to *Comments.applications@phil.frb.org:*

1. *Vecta Partners LLC, White Plains, New York, and Vecta Inc., Irvington, New York;* to engage de novo in real estate acquisition and management through a proposed new subsidiary, Vecta Realty LLC, Montvale, New Jersey, pursuant to section 238.53(b)(7) and (b)(8) of the Board's Regulation LL.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–08708 Filed 4–24–23; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

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 the BHC Act (12 U.S.C. 1842(c)).

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 May 25, 2023.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) One Memorial Drive, Kansas City, Missouri 64198–0001. Comments can also be sent electronically to *KCApplicationComments@kc.frb.org:*

1. *1905 Nekota Bankcorp, Inc.,* to become a bank holding company by acquiring Lewellen National Corp., and thereby indirectly acquiring Bank of Lewellen, all of Lewellen, Nebraska.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–08705 Filed 4–24–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10305]

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 June 26, 2023.

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.*

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–10305 Medicare Part C and Part D Data Validation

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:* Medicare Part C and Part D Data Validation; *Use:* Sections 1857(e) and 1860D–12 of the Social Security Act (''the Act'') authorize CMS to establish information collection requirements with respect to MAOs and Part D sponsors. Section 1857(e) (1) of the Act requires MAOs to provide the Secretary of the Department of Health and Human Services (DHHS) with such information as the Secretary may find necessary and appropriate. Section 1857(e) (1) of the Act applies to Prescription Drug Plans (PDPs) as indicated in section 1860D–12. Pursuant to statutory authority, CMS codified these information collection

requirements in regulation at §§ 422.516(g) Validation of Part C Reporting Requirements, and 423.514(j) Validation of Part D Reporting Requirements, respectively.

Data collected via Medicare Part C and Part D reporting requirements are an integral resource for oversight, monitoring, compliance and auditing activities necessary to ensure quality provision of Medicare benefits to beneficiaries. CMS uses the findings collected through the data validation process to substantiate the data reported via Medicare Part C and Part D reporting requirements. Data validation provides CMS with assurance that plan-reported data are credible and consistently collected and reported by Part C and D SOs. CMS uses validated data to respond to inquiries from Congress, oversight agencies, and the public about Part C and D SOs. The validated data also allows CMS to effectively monitor and compare the performance of SOs over time. Validated plan-reported data may be used for Star Ratings, Display measures and other performance measures. Additionally, SOs can take advantage of the DV process to effectively assess their own performance and make improvements to their internal operations and reporting processes. *Form Number:* CMS–10305 (OMB control number: 0938–1115); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 809; *Total Annual Responses:* 809; *Total Annual Hours:* 10,500. For policy questions regarding this collection contact Chanelle Jones at 410–786–8008.

Dated: April 20, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–08717 Filed 4–24–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Generic Clearance for Reviewer Recruitment Forms

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) proposes to extend approval of the existing overarching generic clearance for Reviewer Recruitment Forms (Office of Management and Budget (OMB) #0970–0477). No changes are proposed to the terms of the overarching generic.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about 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. You can also obtain copies of the proposed collection of information by emailing *opreinfocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The overarching generic clearance for Reviewer Recruitment Forms provides ACF with the opportunity to collect from potential reviewers, such as those who review grant proposals, conference proposals, research/evaluation plans, study designs, report drafts, and/or other ACF materials.

ACF developed this generic because each program office and within ACF has slightly different needs for information about reviewer applicants based on the specific activities for which reviewers are needed, yet the individual forms submitted under the generic will serve an identical function. The overarching purpose is to select qualified reviewers for ACF review processes and activities based on professional qualifications. Information will be collection through questions on forms and documents provided by candidates. Example documents include writing samples and curriculum vitae and/or resume. ACF uses the information collected to recruit well-qualified reviewers with relevant background experience and knowledge.

The abbreviated clearance process of the generic clearance allows program offices to gather a suitable pool of candidates within the varied time periods available for reviewer recruitment.

These forms submitted under this generic will be voluntary, low-burden and uncontroversial.

Respondents: Individuals who may apply to review materials for ACF.

Annual Burden Estimates

This request will extend approval of a subset of currently approved reviewer recruitment forms. Currently approved forms and related burden can be found here: *https://www.reginfo.gov/public/do/PRAICList?ref_nbr=202303-0970-005.*

Burden estimates for the next three years have been updated to reflect trends in use over the past three years. These are based on averages and actual individual requests will vary based on program office need.

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Average burden per response (in hours)	Total burden (in hours)
Reviewer Recruitment Form	3,000	1	.5	1,500

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–08700 Filed 4–24–23; 8:45 am]

BILLING CODE 4184–79–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Guidance for Tribal Temporary Assistance for Needy Families Program (Office of Management and Budget #0970–0157)

AGENCY: Office of Family Assistance; Administration for Children and Families; Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) is requesting a 3-year extension of the form ACF–123: Guidance for the Tribal Temporary Assistance for Needy Families (TANF) Program (Office of Management and Budget (OMB) #0970–0157, expiration date: August 31, 2023). There are minor clarifying changes requested to the guidance.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov*. Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: 42 U.S.C. 612 (section 412 of the Social Security Act) requires each Indian tribe that elects to administer and operate a TANF program to submit a TANF Tribal Plan. This request includes the renewal of the guidance for completing the initial Tribal TANF Plan. The TANF Tribal Plan is a mandatory statement submitted to the Secretary of United States Department of Health and Human Services (HHS) by the Indian tribe, which consists of an outline of how the Indian tribe's TANF program will be administered and operated. It is used by the Secretary to determine whether the plan is approvable and to determine that the Indian tribe is eligible to receive a TANF assistance grant. It is also made available to the public. The renewal includes minor edits, such as updating hyperlinks and correcting typographical errors. Additionally, the list of requirements has been reformatted so that it is easier to read and use.

Respondents: Indian tribes applying to operate a TANF program and to renew their Tribal Family Assistance Plan.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Guidance For The TANF Program	75	1	68	5,100	1,700

Estimated Total Annual Burden Hours: 1,700.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 612.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–08667 Filed 4–24–23; 8:45 am]

BILLING CODE 4184–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–1053]

Agency Information Collection Activities; Proposed Collection; Comment Request; Customer/Partner Service Satisfaction Surveys

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on customer service satisfaction surveys.

DATES: Either electronic or written comments on the collection of information must be submitted by June 26, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of June 26, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your

comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–N–1053 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Customer/Partner Service Satisfaction Surveys.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Customer/Partner Service Satisfaction Surveys

OMB Control Number 0910–0360—Extension

Under section 1003 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393), FDA is authorized to conduct research and public information programs about regulated products and responsibilities of the Agency. Executive Order 12862, entitled ''Setting Customer Service Standard,'' directs Federal Agencies that ''provide significant services directly to the public'' to ''survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.'' FDA is seeking to extend OMB approval to conduct customer service satisfaction surveys to implement Executive Order 12862. Participation in the surveys is voluntary. This request covers customer/partner (including State and local governments) service satisfaction surveys of regulated entities, such as food processors; cosmetic, drug, biologic, and medical device manufacturers; animal drugs, animal food and feed; tobacco products; and consumers and health professionals.

FDA will use the information from these surveys to identify strengths and weaknesses in service to customers/partners and to make improvements. The surveys will measure timeliness, appropriateness, clarity, and accuracy of information, courtesy, and problem resolution in the context of individual programs.

FDA estimates conducting approximately 20 customer/partner service satisfaction surveys per year, each requiring an average of 25 minutes for review and completion. We estimate respondents to these surveys to be between 100 and 20,000 customers/partners. Some of these surveys will be repeats of earlier surveys for purposes of monitoring customer/partner service and developing long-term data. Respondents to this collection of information cover a broad range of stakeholders who have experience with certain products regulated by or services provided by FDA.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Mail, telephone, web-based survey	85,000	1	85,000	.42 (25 minutes)	35,700

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Since the last OMB approval of this information collection request, FDA submitted three requests to increase the total burden hours. Therefore, this request for extension of OMB approval adjusts the number of respondents by an increase of 30,000 and the total burden hours by an increase of 21,950.

Dated: April 19, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–08640 Filed 4–24–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–2657]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Food and Drug Administration's Study of Assessing Physiological, Neural and Self-Reported Response to Tobacco Education Messages

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by May 25, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The title of this information collection is ''Food and Drug Administration's Study of Assessing Physiological, Neural and Self-Reported Response to Tobacco Education Messages.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Food and Drug Administration's Study of Assessing Physiological, Neural and Self-Reported Response to Tobacco Education Messages

OMB Control Number 0910–NEW

On June 22, 2009, the President signed the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) into law. The Tobacco Control Act granted FDA authority to regulate the manufacture, marketing, and distribution of tobacco products; to inform the public on health-related issues; and to protect public health by reducing tobacco use and by preventing death and disease caused by tobacco use.

FDA's Center for Tobacco Products (CTP) was created to carry out the authorities granted under the Tobacco Control Act, to educate the public about the dangers of tobacco use and serve as a public health resource for tobacco and health information. Through CTP, FDA researches, develops, and distributes information about tobacco and health to the public, professionals, various branches of government, and other interested groups nationwide using a wide array of formats and media channels. FDA's ''The Real Cost'' campaign (*https://www.fda.gov/tobacco-products/public-health-education-campaigns/real-cost-campaign*) uses evidence-based paid media advertising to highlight the negative health consequences of tobacco use. To develop the appropriate messaging to inform the public, it is important for FDA to conduct research to assess youth and young adults' perceptions of tobacco use prevention messaging.

The study of ''Assessing Physiological, Neural and Self-Reported Response to Tobacco Education Messages'' is voluntary research. Information obtained through this study will primarily be used to assess the performance of ads developed to reduce tobacco initiation and use among at-risk youth and young adults as part of CTP's ''The Real Cost'' campaign. Traditionally, message testing research employs self-reported measures of perceived effectiveness (*e.g.,* an individual's perception that the ad would make one less likely to use tobacco), but research indicates that while these self-reported measures are useful, they may be imperfect proxies for real world knowledge, attitude, and behavior change. This imprecision could lead message developers to select less than optimal messages or cost-ineffective strategies for widespread dissemination.

Physiological and neural responses to tobacco education messages offer an innovative and useful supplement to traditional self-report measures. Indicators such as heart rate variability, galvanic skin response, and facial electromyography can assess arousal and affective response to messages, while tools such as eye tracking and neuroimaging can measure attention and levels of activation in key areas in the brain associated with message processing and message acceptance. Research indicates that these techniques can be more effective than self-report measures at predicting ''real world'' tobacco education message effectiveness.

There is a need for research that implements these techniques to identify the most effective tobacco prevention and education message strategies. Additionally, there is a need to triangulate data collected through physiological and neuroimaging-based approaches with self-reported measures to better understand how self-reported measures can be implemented in order to accurately predict knowledge, attitude, and behavior change.

This study will recruit participants from the Baltimore, Maryland area to participate in an in-person study visit at Johns Hopkins University Bloomberg School of Public Health. Inclusion and

exclusion criteria are based on the target populations for ''The Real Cost'' campaign. Specifically, the study will collect data from two groups: 50 youth (aged 13–17) and 50 young adults (aged 18–24 years old). Participants will be stratified by electronic nicotine delivery systems and cigarette use, so that approximately half of each sample will be: (1) at risk for initiating a tobacco product (*i.e.,* think they might try one in the near future or would try one if a friend offered it to them) or (2) tobacco experimenter (have had at least 1 but less than 100 cigarettes in their lifetime; have had at least 1 puff of an e-cigarette). Individuals who respond that they have never used tobacco products and respond ''definitely not'' to all questions assessing openness to tobacco use will be excluded from participation. Additionally, those who have established tobacco use patterns will be excluded from participation. Both groups are outside the target demographic for ''The Real Cost'' campaign.

The study will use community-based recruiting, using methods such as flyers posted at locations frequented by young adults, teenagers, and their parents (*e.g.,* local Baltimore City colleges, markets, and other relevant venues), social media, and word-of-mouth. Flyers will be posted with permission and advertise the study as assessing perceptions of tobacco education messages using monitors placed on the head, face, and fingers; special glasses; and a survey. Participants will be directed to complete an online screening survey before scheduling their study visit.

For youth participants, eligible participants will provide contact information for their parent/guardian. The study team will then contact the parent and receive parental permission and schedule a study visit. At the study visit, study personnel will confirm that 13–15-year-olds are accompanied by someone 18 or older and then the youth will provide assent. For young adult participants, after completing the screener, eligible participants will provide their contact information. The study team will then contact the participant and schedule a study visit. At the study visit, young adult participants will provide informed consent prior to beginning study participation.

After the consenting/assenting process, participants will complete one study visit (90 minutes long) in which they will view four FDA tobacco education and prevention ads. First, participants will complete a survey and be fitted with neuroimaging and psychophysiological equipment. Second, participants will be fitted for a functional near-infrared spectroscopy (fNIRS) headband (the headband can be adjusted based on head circumference) and then have the fNIRS headband and electrodes for physiological data collection, and eye-tracking glasses placed on them. They will then complete a series of computer tasks to ensure placement of the fNIRS headband and fill out part one of the survey on demographic characteristics, tobacco use behaviors, and social influence related to tobacco use. Next, they will view tobacco education messages, and complete part two of the survey providing self-reported response data (*e.g.,* how much they liked the ad) after each message. Participants will conclude the survey by completing the third part of the survey assessing psychosocial variables. Participants will receive a small incentive as a token of appreciation in exchange for their survey participation. Additionally, for youth (ages 13–15) participants, the adult who accompanies the youth will receive a token of appreciation in exchange for costs of accompanying the youth to the study site (*e.g.,* parking, gas, and potential loss of income/childcare needed for youth to participate).

In the **Federal Register** of November 22, 2022 (87 FR 71335), FDA published a 60-day notice requesting public comment on the proposed collection of information. One comment was received that was not PRA related.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Participant subgroup	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours [1]
Number to take the eligibility screener					
Youth (aged 13–17)	150	1	150	0.083 (5 minutes)	13
Young adults (aged 18–24)	150	1	150	0.083 (5 minutes)	13
Total					26
Number to obtain parental permission process (for parents of youth only) and schedule site visit					
Parents of youth participants	75	1	75	0.167 (10 minutes)	13
Young adults (aged 18–24)	50	1	50	0.083 (5 minutes)	4
Total					17
Number to complete consent (5 min) and main study (85 min)					
Youth (aged 13–17)	50	1	50	1.5	75
Young adults (aged 18–24)	50	1	50	1.5	75
Total					150
Total					193

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's burden estimate is based on prior experience with research that is similar to this proposed study. Applying assumptions from previous experience in conducting similar studies, approximately 150 youth and 150 young

adults would take the eligibility screener, which is estimated to take 5 minutes to read and respond. An estimated 75 parents of youth participants will provide parental permission and schedule a site visit (10 minutes total), and an estimated 50 young adults will schedule a site visit (5 minutes). Finally, approximately 50 youth and 50 young adults will complete an in-person study visit that consists of the consent/assent (5 minutes) and complete the main study (85 minutes) to yield the desired sample size of 100 total. The total estimated burden for the data collection is 193 hours. Table 1 details these estimates.

Dated: April 20, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–08684 Filed 4–24–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–1357]

Authorization of Emergency Use of a Medical Device During COVID–19; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the issuance of an Emergency Use Authorization (EUA) (the Authorization) for a medical device related to the Coronavirus Disease 2019 (COVID–19) public health emergency. FDA has issued the Authorization indicated in this document under the Federal Food, Drug, and Cosmetic Act (FD&C Act). This Authorization contains, among other things, conditions on the emergency use of the authorized product. The Authorization follows the February 4, 2020, determination by the Secretary of Health and Human Services (HHS), as amended on March 15, 2023, that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of U.S. citizens living abroad and that involves the virus that causes COVID–19, and the subsequent declarations on February 4, 2020, March 2, 2020, and March 24, 2020, that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection and/or diagnosis of the virus that causes COVID–19, personal respiratory protective devices, and medical devices, including alternative products used as medical devices, respectively, subject to the terms of any authorization issued under the FD&C Act. The Authorization, which includes an explanation of the reasons for issuance, is specified in this document, and can be accessed on FDA's website from the links indicated.

DATES: The Authorization is effective on the date of issuance.

ADDRESSES: Submit written requests for single copies of an EUA to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a Fax number to which the Authorization may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the Authorization.

FOR FURTHER INFORMATION CONTACT: Kim Sapsford-Medintz, Office of Product Evaluation and Quality, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3216, Silver Spring, MD 20993–0002, 301–796–0311 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) allows FDA to strengthen the public health protections against biological, chemical, radiological, or nuclear agent or agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. With this EUA authority, FDA can help ensure that medical countermeasures may be used in emergencies to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by a biological, chemical, radiological, or nuclear agent or agents when there are no adequate, approved, and available alternatives.

Section 564(b)(1) of the FD&C Act provides that, before an EUA may be issued, the Secretary of HHS must declare that circumstances exist justifying the authorization based on one of the following grounds: (1) a determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a biological, chemical, radiological, or nuclear agent or agents; (2) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to U.S. military forces, including personnel operating under the authority of title 10 or title 50 of the U.S. Code, of attack with (A) a biological, chemical, radiological, or nuclear agent or agents; or (B) an agent or agents that may cause, or are otherwise associated with, an imminently life-threatening and specific risk to U.S. military forces;[1] (3) a determination by the Secretary of HHS that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of U.S. citizens living abroad, and that involves a biological, chemical, radiological, or nuclear agent or agents, or a disease or condition that may be attributable to such agent or agents; or (4) the identification of a material threat by the Secretary of Homeland Security pursuant to section 319F–2 of the Public Health Service (PHS) Act (42 U.S.C. 247d–6b) sufficient to affect national security or the health and security of U.S. citizens living abroad.

Once the Secretary of HHS has declared that circumstances exist justifying an authorization under section 564 of the FD&C Act, FDA may authorize the emergency use of a drug, device, or biological product if the Agency concludes that the statutory criteria are satisfied. Under section 564(h)(1) of the FD&C Act, FDA is required to publish in the **Federal Register** a notice of each authorization, and each termination or revocation of an authorization, and an explanation of the reasons for the action. Under section 564(h)(1) of the FD&C Act, revisions to an authorization shall be made available on the internet website of FDA. Section 564 of the FD&C Act permits FDA to authorize the introduction into interstate commerce of a drug, device, or biological product intended for use when the Secretary of HHS has declared that circumstances exist justifying the authorization of emergency use. Products appropriate for emergency use may include products and uses that are not approved, cleared, or licensed under section 505, 510(k), 512, or 515 of the FD&C Act (21 U.S.C. 355, 360(k), 360b,

[1] In the case of a determination by the Secretary of Defense, the Secretary of HHS shall determine within 45 calendar days of such determination, whether to make a declaration under section 564(b)(1) of the FD&C Act, and, if appropriate, shall promptly make such a declaration.

or 360e) or section 351 of the PHS Act (42 U.S.C. 262), or conditionally approved under section 571 of the FD&C Act (21 U.S.C. 360ccc). FDA may issue an EUA only if, after consultation with the HHS Assistant Secretary for Preparedness and Response, the Director of the National Institutes of Health, and the Director of the Centers for Disease Control and Prevention (to the extent feasible and appropriate given the applicable circumstances), FDA [2] concludes: (1) that an agent referred to in a declaration of emergency or threat can cause a serious or life-threatening disease or condition; (2) that, based on the totality of scientific evidence available to FDA, including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that (A) the product may be effective in diagnosing, treating, or preventing (i) such disease or condition; or (ii) a serious or life-threatening disease or condition caused by a product authorized under section 564, approved or cleared under the FD&C Act, or licensed under section 351 of the PHS Act, for diagnosing, treating, or preventing such a disease or condition caused by such an agent; and (B) the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product, taking into consideration the material threat posed by the agent or agents identified in a declaration under section 564(b)(1)(D) of the FD&C Act, if applicable; (3) that there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition; (4) in the case of a determination described in section 564(b)(1)(B)(ii), that the request for emergency use is made by the Secretary of Defense; and (5) that such other criteria as may be prescribed by regulation are satisfied. No other criteria for issuance have been prescribed by regulation under section 564(c)(4) of the FD&C Act.

II. Electronic Access

An electronic version of this document and the full text of the Authorization is available on the internet and can be accessed from *https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization.*

[2] The Secretary of HHS has delegated the authority to issue an EUA under section 564 of the FD&C Act to the Commissioner of Food and Drugs.

III. The Authorization

Having concluded that the criteria for the issuance of the following Authorization under section 564(c) of the FD&C Act are met, FDA has authorized the emergency use of the following product for diagnosing, treating, or preventing COVID–19 subject to the terms of each Authorization. The Authorization in its entirety, including any authorized fact sheets and other written materials, can be accessed from the FDA web page entitled ''Emergency Use Authorization,'' available at *https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization.* The list includes the Authorization issued on March 24, 2023, and we have included an explanation of the reasons for the issuance, as required by section 564(h)(1) of the FD&C Act. In addition, any EUAs that have been reissued can be accessed from FDA's web page: *https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization.*

FDA is hereby announcing the following Authorization for a molecular diagnostic and antigen test for COVID–19, excluding multianalyte tests: [3]

- BioSynchronicity Corporation's C-Sync COVID–19 Antigen Test, issued March 24, 2023.

Dated: April 19, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–08641 Filed 4–24–23; 8:45 am]

BILLING CODE 4164–01–P

[3] As set forth in the EUA for this product, FDA has concluded that: (1) SARS–CoV–2 can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the product may be effective in diagnosing COVID–19, and that the known and potential benefits of the product, when used for diagnosing COVID–19, outweigh the known and potential risks of such product; and (3) there is no adequate, approved, and available alternative to the emergency use of the product.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0795]

Agency Information Collection Activities; Proposed Collection; Comment Request; A Survey on Quantitative Claims in Direct-to-Consumer Prescription Drug Advertising

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the proposed study entitled ''A Survey on Quantitative Claims in Direct-to-Consumer Prescription Drug Advertising.''

DATES: Either electronic or written comments on the collection of information must be submitted by June 26, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of June 26, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or

confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–N–0795 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; A Survey on Quantitative Claims in Direct-to-Consumer Prescription Drug Advertising.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

A Survey on Quantitative Claims in Direct-to-Consumer Prescription Drug Advertising

OMB Control Number 0910–NEW

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 393(d)(2)(C)) authorizes FDA to conduct research relating to drugs and other FDA-regulated products in carrying out the provisions of the FD&C Act.

The mission of the Office of Prescription Drug Promotion (OPDP) is to protect the public health by helping to ensure that prescription drug promotion is truthful, balanced, and accurately communicated so that patients and healthcare providers can make informed decisions about treatment options. OPDP's research program provides scientific evidence to help ensure that our policies related to prescription drug promotion will have the greatest benefit to public health. Toward that end, we have consistently conducted research to evaluate the aspects of prescription drug promotion that are most central to our mission, focusing in particular on three main topic areas: advertising features, including content and format; target populations; and research quality. Through the evaluation of advertising features, we assess how elements such as graphics, format, and the characteristics of the disease and product impact the communication and understanding of prescription drug risks and benefits. Focusing on target populations allows us to evaluate how understanding of prescription drug risks and benefits may vary as a function of audience. Our focus on research quality aims at maximizing the quality of our research data through analytical methodology development and investigation of sampling and response issues. This study will inform the first topic area, advertising features.

Because we recognize that the strength of data and the confidence in the robust nature of the findings are improved through the results of multiple converging studies, we continue to develop evidence to inform our thinking. We evaluate the results from our studies within the broader context of research and findings from

other sources, and this larger body of knowledge collectively informs our policies as well as our research program. Our research is documented on our homepage at *https://www.fda.gov/about-fda/center-drug-evaluation-and-research-cder/office-prescription-drug-promotion-opdp-research,* which includes links to the latest **Federal Register** notices and peer-reviewed publications produced by our office.

Direct-to-consumer (DTC) prescription drug advertising may make quantitative claims about the drug's efficacy or risks (Ref. 1). Although there is research and FDA guidance (''Presenting Quantitative Efficacy and Risk Information in Direct-to-Consumer Promotional Labeling and Advertisements,'' available at *https://www.fda.gov/media/117573/download*) that provides general guidelines for how to present quantitative information, it is not fully understood how consumers will interpret specific quantitative claims. We conducted a literature review and found that while some types of quantitative information are well-studied (*e.g.,* relative frequencies), many questions remain on how best to communicate certain quantitative information about prescription drugs. For example, we do not have sufficient information about how consumers interpret different claims describing medians (*e.g.,* ''People treated with Drug X lived for a median of 8 months'' alone or in combination with a definition such as ''In people receiving Drug X, this means that about half lived more than 8 months and about half lived less than 8 months'' or ''A median is the middle number in a group of numbers ordered from smallest to largest''). This study aims to survey U.S. adults about their interpretation of specific quantitative claims.

We plan to use an address-based, mixed-mode methodology that will direct one randomly chosen member of sampled households to complete a 20-minute online survey, with nonrespondents receiving a paper questionnaire. The sample will be representative of the U.S. population. A sample of U.S. households will be drawn from the U.S. Postal Service Computerized Delivery Sequence File. Adults aged 18 or over will be eligible for participation. Up to four contacts (mailings) will be sent to respondents by U.S. mail. The contacts will include the URL for the online survey and a unique survey login. This unique survey login will be used to track completed surveys without the use of personally identifying information. The contact method, based on recent recommendations (Ref. 2), includes a prenotification letter (week 1), a web survey invitation letter (soft launch in week 2, full launch in week 3), a reminder postcard sent to nonresponders (week 5), and a final mailing with the paper version of the survey sent to nonresponders (Week 7). We estimate a 40-percent response rate, based on recent experience with similar surveys. We estimate 1,100 respondents will complete the main study (see table 1).

Based on previous research (Refs. 3, 4, and 5), we plan to include a small prepaid incentive in the second mailing sent to the sampled addresses as a gesture to encourage response and maintain data quality. We expect that approximately 5 percent of the sampled addresses will be postal nondeliverable returned letters from the first mailing (prenotification letter), so the second mailing is estimated to go out to the remaining addresses. We also will conduct an experiment to assess the efficacy of using a promised post-paid incentive. Seventy-five percent of the sample will be sent the promised incentive upon completion of the survey, and the remaining 25 percent of the sample will not be notified of or provided with any promised incentive. We opted to split the sample 75–25 rather than 50–50 because the initial evidence shows the benefits of including a promised incentive (Refs. 4, 6, and 7), and we aimed to maximize response rates.

The survey contains questions about respondents' perceptions and understanding of several quantitative claims drawn from DTC ads in the marketplace. We will also measure other potentially important variables, such as demographics and numeracy. The survey questions will be informed by consumer feedback elicited in one-on-one interviews (approved under OMB control number 0910–0847). The survey is available upon request from *DTCResearch@fda.hhs.gov*.

We will test whether any variables differed between modes (online versus mail survey) and will account for any mode effects in our analyses. We will examine the descriptive statistics for the survey items (*e.g.,* frequencies and percentages) and explore the relationship between the survey items and demographic and health characteristics. We will weight the data to account for different probability of selection and nonresponse.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Read prenotification letter	2,993	1	2,993	0.08 (5 min.)	239
Read web survey invitation letter [2]	2,843	1	2,843	0.08 (5 min.)	227
Read reminder postcard	2,585	1	2,585	0.03 (2 min.)	78
Respond to survey (web and paper)	1,100	1	1,100	0.33 (20 min.)	363
Total					907

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The numbers assume around 5 percent postal nondeliverables from the prenotification letter and estimates nonrespondents for the subsequent mailings.

References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff, (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at *https://www.regulations.gov.* References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. FDA has verified the website addresses, as of the date this document publishes in the

Federal Register, but websites are subject to change over time.

* 1. Sullivan, H.W., K.J. Aikin, and L.B. Squiers, ''Quantitative Information on Oncology Prescription Drug Websites,'' *Journal of Cancer Education* vol. 33, Issue 2, pp. 371–374, 2018. (*https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5334459/*).
2. Dillman, D.A., J.D. Smyth, and L.M. Christian, *Internet, Phone, Mail, and Mixed-Mode Surveys: The Tailored Design Method, 4th ed.,* John Wiley & Sons, Inc.: Hoboken, NJ, 2014.
* 3. Cheung, Y.T.D., X. Weng, M.P. Wang, et al., ''Effect of Prepaid and Promised Financial Incentive on Follow-Up Survey Response in Cigarette Smokers: A Randomized Controlled Trial,'' *BMC Medical Research Methodology,* vol. 19, Article 138, 2019. (*https://link.springer.com/article/10.1186/s12874-019-0786-9*)
4. Mercer, A., A. Caporaso, D. Cantor, et al., ''How Much Gets You How Much? Monetary Incentives and Response Rates in Household Surveys,'' *Public Opinion Quarterly,* vol. 79, pp. 105–129, 2015.
5. Sun, H., J. Newsome, J. McNulty, et al., ''What Works, What Doesn't? Three Studies Designed to Improve Survey Response,'' *Field Methods,* vol. 32, Issue 3, pp. 235–252, 2020. (*https://doi.org/10.1177/1525822X20915464*).
6. Ellis, J., J. Charbonnier, C. Lowenstein, et al., ''Assessing the Impacts of Different Incentives and Use of Postal Mail on Response Rates,'' *American Association for Public Opinion Research (AAPOR) Conference,* Chicago, IL, 2022, May.
* 7. Yu, S., H.E. Alper, A.M. Nguyen, et al., ''The Effectiveness of a Monetary Incentive Offer on Survey Response Rates and Response Completeness in a Longitudinal Study,'' *BMC Medical Research Methodology,* vol. 17, Article 77, 2017. (*https://bmcmedresmethodol.biomedcentral.com/articles/10.1186/s12874-017-0353-1*).

Dated: April 20, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–08686 Filed 4–24–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Modernization of Compliance Program Guidance Documents

AGENCY: Office of Inspector General (OIG), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This **Federal Register** notice sets forth upcoming procedures for issuing compliance program guidance documents from HHS–OIG.

FOR FURTHER INFORMATION CONTACT: Amanda Copsey, (202) 619–0335.

HHS–OIG is modernizing the accessibility and usability of our publicly available resources, including OIG's Compliance Program Guidances (CPGs). OIG developed CPGs as voluntary, nonbinding guidance documents to encourage the development and use of internal controls to monitor adherence to applicable statutes, regulations, and program requirements. More specifically, beginning in 1998, OIG embarked on a major initiative to engage the private health care community in preventing the submission of erroneous claims and in combating fraud and abuse in Federal health care programs through voluntary compliance efforts. As part of that initiative, OIG developed a series of CPGs directed at the following segments of the health care industry: (1) hospitals; [1] (2) home health agencies; [2] (3) clinical laboratories; [3] (4) third-party medical billing companies; [4] (5) the durable medical equipment, prosthetics, orthotics, and supply industry; [5] (6) hospices; [6] (7) Medicare Advantage (formerly known as Medicare+Choice) organizations; [7] (8) nursing facilities; [8] (9) ambulance suppliers; [9] (10) physicians; [10] and (11) pharmaceutical manufacturers.[11]

Based on feedback received as part of OIG's Modernization Initiative and other input,[12] we understand that CPGs have served as an important and valuable OIG resource for the health care compliance community and industry stakeholders over the last 25 years. OIG has carefully considered ways to improve and update existing CPGs and to deliver new CPGs specific to segments of the health care industry or entities involved in the health care industry that have emerged in the last two decades. In modernizing OIG's CPGs, our goal is to produce useful, informative resources—as timely as possible—to help advance the industry's voluntary compliance efforts in preventing fraud, waste, and abuse in the health care system.

Through this Notice, OIG is notifying the public of the following:

- OIG will no longer publish updated or new CPGs in the **Federal Register**. All current, updated, and new CPGs will be available on our website.[13]
- OIG has developed a new format for CPGs:
  - ○ We will publish a General CPG (GCPG) that applies to all individuals and entities involved in the health care industry. The GCPG will address topics such as: federal fraud and abuse laws, compliance program basics, operating effective compliance programs, and OIG processes and resources. We anticipate updating the GCPG as changes in compliance practices or legal requirements warrant. OIG plans to publish the GCPG by the end of calendar year 2023.
  - ○ Second, we will publish industry-specific CPGs (ICPGs) for different types of providers, suppliers, and other participants in health care industry subsectors or ancillary industry sectors relating to Federal health care programs. ICPGs will be tailored to fraud and abuse risk areas for each industry subsector and will address compliance measures that the industry subsector participants can take to reduce these risks. ICPGs are intended to be updated periodically to address newly identified risk areas and compliance measures and to ensure timely and meaningful guidance from OIG. OIG expects to begin publishing ICPGs in calendar year 2024. Currently, OIG anticipates that the first two ICPGs will address Medicare Advantage and nursing facilities.
- When the new GCPG and ICPGs, along with any updates to these documents, are published on OIG's website, OIG will notify the public using our public listserv [14] and other communications platforms.

[1] *OIG Compliance Program Guidance for Hospitals,* 63 FR 8987 (Feb. 23, 1998); *Supplemental Compliance Program Guidance for Hospitals,* 70 FR 4858 (Jan. 31, 2005).

[2] *OIG Compliance Program Guidance for Home Health Agencies,* 63 FR 42410 (Aug. 7, 1998).

[3] *OIG Compliance Program Guidance for Clinical Laboratories,* 63 FR 45076 (Aug. 24, 1998).

[4] *OIG Compliance Program Guidance for Third-Party Medical Billing Companies,* 63 FR 70138 (Dec. 18, 1998).

[5] *OIG Compliance Program Guidance for the Durable Medical Equipment, Prosthetics, Orthotics, and Supply Industry,* 64 FR 36368 (July 6, 1999).

[6] *OIG Compliance Program Guidance for Hospices,* 64 FR 54031 (Oct. 5, 1999).

[7] *OIG Compliance Program Guidance for Medicare+Choice Organizations,* 64 FR 61893 (Nov. 15, 1999).

[8] *OIG Compliance Program Guidance for Nursing Facilities,* 65 FR 14289 (Mar. 16, 2000); *OIG Supplemental Compliance Program Guidance for Nursing Facilities,* 73 FR 56832 (Sept. 30, 2008).

[9] *OIG Compliance Program Guidance for Ambulance Suppliers,* 68 FR 14245 (Mar. 24, 2003).

[10] *OIG Compliance Program Guidance for Individual and Small Group Physician Practices,* 65 FR 59434 (Oct. 5, 2000).

[11] *OIG Compliance Program Guidance for Pharmaceutical Manufacturers,* 68 FR 23731 (May 5, 2003).

[12] *See, e.g.,* Department of Health and Human Services, Office of Inspector General, *OIG Modernization Initiative To Improve Its Publicly Available Resources—Request for Information,* 86 FR 53072 (Sept. 24, 2021).

[13] All CPGs issued to date are currently available on the Compliance Guidance page of our website at *https://oig.hhs.gov/compliance/compliance-guidance/* (last visited Mar. 6, 2023).

[14] To join OIG's listserv, visit *https://cloud.connect.hhs.gov/OIG/.*

Neither OIG's existing CPGs nor any forthcoming GCPG or ICPG constitutes a model compliance program. Rather, the goal of these documents has been, and will continue to be, to set forth a voluntary set of guidelines and identified risk areas that OIG believes individuals and entities engaged in the health care industry should consider when developing and implementing a new compliance program or evaluating an existing one. Our existing CPGs and supplemental CPGs will remain available for use as an ongoing resource as we develop and publish the GCPG and ICPGs.

Christi A. Grimm,

Inspector General.

[FR Doc. 2023–08326 Filed 4–24–23; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Neurological Disorders and Stroke Special Emphasis Panel, which was published in the **Federal Register** on March 22, 2023, FR Doc. 2023–05787, 88 FR 17240.

This notice is being amended to change the dates of this two-day meeting from April 20–21, 2023, to May 11–12, 2023. The meeting is closed to the public.

Dated: April 19, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–08632 Filed 4–24–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel; Respiratory Tobacco Fund K Awards.

Date: May 25, 2023.

Time: 9:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4136, Bethesda, MD 20892, 301–435–0904, *sara.ahlgren@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 19, 2023.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–08679 Filed 4–24–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council on Drug Abuse.

The meeting will be open to the public, as indicated below, with attendance limited to space available. Individuals who plan to attend as well as those who need special assistance, such as sign language interpretation or other reasonable accommodations, should notify Dr. Gillian Acca via email at *gillian.acca@nih.gov* five days in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*https://videocast.nih.gov/*).

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Drug Abuse.

Date: May 9, 2023.

Closed: 10:30 a.m. to 11:45 a.m.

Agenda: To review and evaluate grant applications.

Open: 12:45 p.m. to 5:00 p.m.

Agenda: Presentations and other business of the Council.

Place: Rockledge II, Conference Room 270 A/B, National Institutes of Health, National Institute on Drug Abuse, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Susan R.B. Weiss, Ph.D., Director, Division of Extramural Research, Office of the Director, National Institute on Drug Abuse, NIH, Three White Flint North, RM 09D08, 11601 Landsdown Street, Bethesda, MD 20852, 301–443–6480, *sweiss@nida.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to Dr. Gillian Acca via email at *gillian.acca@nih.gov.* The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Additional Health and Safety Guidance: Before attending a meeting at an NIH facility, it is important that visitors review the NIH COVID–19 Safety Plan at *https://ors.od.nih.gov/sr/dohs/safety/NIH-covid-19-safety-plan/Pages/default.aspx* for information about requirements and procedures for entering NIH facilities, especially when COVID–19 community levels are medium or high. In addition, the Safer Federal Workforce website has FAQs for visitors at *https://www.saferfederalworkforce.gov/faq/visitors/.* Please note that if an individual has a COVID–19 diagnosis within 10 days of the meeting, that person must attend virtually. (For more information please read NIH's Requirements for Persons after Exposure at *https://ors.od.nih.gov/sr/dohs/safety/*

NIH-covid-19-safety-plan/COVID-assessment-testing/Pages/persons-after-exposure.aspx and What Happens When Someone Tests Positive at *https://ors.od.nih.gov/sr/dohs/safety/NIH-covid-19-safety-plan/COVID-assessment-testing/Pages/test-positive.aspx*.) Anyone from the public can attend the open portion of the meeting virtually via the NIH Videocasting website (*http://videocast.nih.gov*). Please continue checking these websites, in addition to the committee website listed below, for the most up to date guidance as the meeting date approaches.

Information is also available on the Institute's/Center's home page: *www.drugabuse.gov/NACDA/NACDAHome.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 19, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–08637 Filed 4–24–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Vaccine Research Center Board of Scientific Counselors, NIAID.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Vaccine Research Center Board of Scientific Counselors, NIAID.

Date: June 23, 2023.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Vaccine Research Center, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 40 Convent Drive, Room 1100, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sarah J. Austin, Vaccine Research Center, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 40 Convent Drive, Room 1100, Bethesda, MD 20892, (301) 761–7187, *austinsj@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: April 19, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–08630 Filed 4–24–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel; Neurological and Neuropsychiatric Disorders.

Date: May 2, 2023.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Salma Asmat Quraishi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–0592, *salma.quraishi@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 19, 2023.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–08680 Filed 4–24–23; 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; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke, May 7, 2023, 2:00 p.m. to 7:30 p.m., May 8, 2023, 8:30 a.m. to 9:00 p.m., and May 9, 2023, 9:00 a.m. to 12:30 p.m., The Bethesdan Hotel, 8120 Wisconsin Avenue, Bethesda, Maryland 20814, which was published in the **Federal Register** on April 14, 2023, FR Doc. 2023–07893, 88 FR 23093.

This notice is being amended to change the meeting format to virtual. The dates and times will remain the same. The meeting is closed to the public.

Dated: April 19, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–08627 Filed 4–24–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend as well as those who need special assistance,

such as sign language interpretation or other reasonable accommodations, must notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

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/or 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 grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: May 16–17, 2023.

Open: May 16, 2023, 12:00 p.m. to 4:30 p.m.

Agenda: Presentation of the NIMH Director's Report and discussion of NIMH programs.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Room 160, Bethesda, MD 20892.

Closed: May 17, 2023, 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications and/or contract proposals.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Room 160, Bethesda, MD 20892.

Contact Person: Tracy L. Waldeck, Ph.D., Director, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Bethesda, MD 20892, (301) 480–6833, *tracy.waldeck@nih.gov*.

Any member of the public interested in presenting oral comments to the committee must notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice at least 10 days in advance of the meeting. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nimh.nih.gov/about/advisory-boards-and-groups/namhc/index.shtml,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: April 19, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–08631 Filed 4–24–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Division of Intramural Research Board of Scientific Counselors, NIAID.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Division of Intramural Research Board of Scientific Counselors, NIAID.

Date: June 12–14, 2023.

Time: 7:45 a.m. to 10:55 a.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, Building 50, Conference Room 1227/1233, 50 Center Drive, Bethesda, MD 20892.

Contact Person: Laurie Lewallen, Division of Intramural Research Program Support Staff,' National Institute of Allergy and Infectious Diseases, National Institutes of Health, Building 33, Room 1N24, 33 North Drive, Bethesda, MD 20892, 301–761–6362, *Laurie.Lewallen@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: April 19, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–08626 Filed 4–24–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information may be obtained by communicating with the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852 by contacting Dr. Benjamin Hurley at 240–669–5092 or *benjamin.hurley@nih.gov.* A signed Confidential Disclosure Agreement will be required to receive copies of unpublished information related to the invention.

SUPPLEMENTARY INFORMATION: Technology description follows:

Engineered Cell-Penetrating Monoclonal Antibody for Universal Influenza Immunotherapy

Description of Technology: Influenza remains a burden on public health, as current treatments of viral infections remain ineffective due to frequent virus mutations. Many current influenza treatments rely on targeting surface viral glycoproteins. Unfortunately, these glycoproteins are primary targets of the immune system, which results in increased selection

pressure and mutational rate, leading to the well-known seasonal variation of influenza virus. In contrast, the nucleocapsid viral protein (NP), located in the interior of the virus, is more conserved and an ideal antibody target; however, NP is inaccessible to extracellular antibodies produced in response to infection. To circumvent the challenge of targeting NP, scientists at NIAID have developed an antibody genetically fused with a cell penetrating peptide (CPP-mAb) that targets NP within infected cells to effectively inhibit viral replication. By targeting NP rather than the surface glycoproteins, this CPP-mAb can treat more influenza variants, potentially across flu seasons, and is an improvement upon current influenza treatments.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration.

Potential Commercial Applications:

- Clinical Treatment: CPP-mAbs against influenza NP may be a reliable and effective method to treat patients infected with varying subtypes of influenza, by targeting a functionally conserved protein.
- CPP-mAbs could be a viable alternative to the treatment of influenza when other treatments are ineffective, potentially lowering the mortality and morbidity rates in populations susceptible to influenza infection.

Competitive Advantages:

- Current vaccines remain effective for a short time period, due to the ever-changing nature of the viral surface glycoproteins. CPP-mAbs could remain effective for a longer time period by targeting the interior NP of influenza, which is more conserved across influenza subtypes.
- Other attempts to produce vaccines against conserved portions of the surface viral glycoproteins have failed to produce a robust and reliable vaccine. CPP-mAbs could be a more reliable therapeutic agent compared to alternatives, potentially effective across flu seasons.
- *In vivo efficacy:* CPP-mAbs against NP increase survivorship in mice infected with mouse Influenza A virus, demonstrating therapeutic protection.

Development Stage:

- *Pre-Clinical.*

Inventors: Jonathon Yewdell, MD, Ph.D. and Ivan Kosik, Ph.D., both from NIAID.

Publications: Publication pending.

Intellectual Property: HHS Reference No. E–193–2021; US Provisional Application No. 63/365,841, filed on June 3rd, 2022.

Licensing Contact: To license this technology, please contact Benjamin Hurley at 240–669–5092 or *benjamin.hurley@nih.gov,* and reference E–193–2021.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize this invention. For collaboration opportunities, please contact Benjamin Hurley; 240–669–5092, *benjamin.hurley@nih.gov.*

Dated: April 19, 2023.

Surekha Vathyam,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2023–08642 Filed 4–24–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2023–0011; OMB No. 1660–0015]

Agency Information Collection Activities: Proposed Collection; Comment Request; Revisions to National Flood Insurance Program Maps: Application Forms and Instructions for (C)LOMAs and (C)LOMR–Fs

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on an extension, with change of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning information required by FEMA to amend or revise National Flood Insurance Program (NFIP) maps to remove certain property from the one-percent annual chance floodplain.

DATES: Comments must be submitted on or before June 26, 2023.

ADDRESSES: To avoid duplicate submissions to the docket, please submit comments at *www.regulations.gov* under Docket ID FEMA–2023–0011. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, 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 read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bryan Anderson, FEMA, Federal Insurance & Mitigation Administration, at (202) 577–2397 or *Bryanb.Anderson@fema.dhs.gov.* You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) is authorized by the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.* The Federal Emergency Management Agency (FEMA) administers the NFIP and maintains the maps that depict flood hazard information. The land area covered by the floodwaters of the base flood is the Special Flood Hazard Area (SFHA) on NFIP maps. The SFHA is the area where the NFIP's floodplain management regulations must be enforced and the area where the mandatory purchase of flood insurance applies. If a SFHA has been determined to exist for property and the owner or lessee of the property believes his/her property has been incorrectly included in a SFHA, information can be provided to support removal of the SFHA designation. NFIP regulations, at 44 CFR parts 65 and 70, outline the data that must be submitted by an owner or lessee of property who believes their property has been incorrectly included in a SFHA. In order to remove an area from a SFHA, the owner or lessee of the property must submit scientific or technical data demonstrating that the area is ''reasonably safe from flooding'' and not in the SFHA.

This information collection is set to expire on July 31, 2023. FEMA is requesting a revision to the currently approved information collection.

Collection of Information

Title: Revisions to National Flood Insurance Program Maps: Application Forms and Instructions for (C)LOMAs and (C)LOMR–Fs.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0015.

FEMA Forms: FEMA Form FF–206–FY–23–104 (formerly 086–0–22) and FEMA Form FF–206–FY–23–104–A (formerly 086–0–22A (Spanish)), Application Form for Single Residential Lot or Structure Amendments to National Flood Insurance Program Maps; FEMA Form FF–206–FY–23–105 (formerly 086–0–26), Property Information Form; FEMA Form FF–206–FY–23–106 (formerly 086–0–26A), Elevation Form; and FEMA Form FF–206–FY–23–107 (formerly 086–0–26B), Community Acknowledgment Form.

Abstract: FEMA collects scientific and technical data submissions to determine whether a specific property is located within or outside of a SFHA. If the property is determined not to be within a SFHA, FEMA provides a written determination and the appropriate map is modified by a Letter of Map Amendment (LOMA) or a Letter of Map Revision—Based on Fill (LOMR–F), making it possible for the lending institution to waive the flood insurance requirement.

Affected Public: Individuals or households; Business or other for-profit institutions; State, Local or Tribal government.

Estimated Number of Respondents: 67,701.

Estimated Number of Responses: 67,701.

Estimated Total Annual Burden Hours: 71,234.

Estimated Total Annual Respondent Cost: $3,474,941.

Estimated Respondents' Operation and Maintenance Costs: $12,215,500.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $112,712.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the Agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2023–08703 Filed 4–24–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control No. 1615–0029]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Application for Waiver of Grounds of Inadmissibility

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 May 25, 2023.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2007–0042. All submissions received must include the OMB Control Number 1615–0029 in the body of the letter, the agency name and Docket ID USCIS–2007–0042.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, Telephone number (240) 721–3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *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 December 29, 2022, at 87 FR 80194, allowing for a 60-day public comment period. USCIS did receive 2 comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–0042 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:* Application for Waiver of Grounds of Inadmissibility.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–601; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–601 is necessary for USCIS to determine whether the applicant is eligible for a waiver of inadmissibility under section 212 of the Act. Furthermore, this information collection is used by individuals who are seeking for Temporary Protected Status (TPS).

(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 Form I–601 is 15,700 and the estimated hour burden per response is 1.65 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 25,905 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 $6,064,125.

Dated: April 18, 2023.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023–08721 Filed 4–24–23; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2023–0047; FXES11140400000EA–234–FF04EA1000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Alabama Beach Mouse, Baldwin County, AL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from James Bruckmann (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed Alabama beach mouse (*Peromyscus polionotus ammobates*) incidental to construction in the City of Orange Beach, Baldwin County, Alabama. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the Department of the Interior's (DOI) NEPA regulations, and the DOI Departmental Manual. To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

DATES: We must receive your written comments on or before May 25, 2023.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS–R4–ES–2023–0047 at *https://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by one of the following methods:

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2023–0047.
- *U.S. Mail:* Public Comments Processing; Attn: Docket No. FWS–R4–ES–2023–0047; U.S. Fish and Wildlife Service; MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Mr. William Lynn, Project Manager, by telephone at 251–441–5868 or by email at *william_lynn@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application from James Bruckmann (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally endangered Alabama beach mouse (ABM; *Peromyscus polionotus ammobates*) incidental to the construction of three single-family homes (project) in the City of Orange Beach, Baldwin County, Alabama. We request public comment on the application, which includes the applicant's habitat conservation plan (HCP), and on the Service's preliminary determination that this proposed ITP qualifies as ''low effect,'' and may qualify for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.4), the Department of the Interior's (DOI) NEPA regulations (43 CFR 46), and the DOI's Departmental Manual (516 DM 8.5(C)(2)). To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review.

Proposed Project

The applicant requests a 30-year ITP to take ABM by converting approximately 0.319 acre (ac) of occupied ABM foraging and sheltering habitat incidental to the construction of three single-family homes located on three parcels totaling 2.79 ac in Baldwin County, Alabama. On the largest parcel, there was a previous single-family home that was destroyed in 2004 by Hurricane Ivan. The remaining portion of habitat on the lot (2.47 ac) will be protected and maintained to continue to provide habitat for the ABM. Minimization and mitigation measures include pre-construction trapping, relocation, annual monitoring, management, and reporting efforts. Habitat enhancement will occur on areas in need through augmentation of natural processes, including sand fencing. The applicant

proposes to donate a $2.30-per-square-foot in-lieu fee for the 0.319-ac take to the Alabama Coastal Heritage Trust (ACHT), which will use the fee to manage, maintain, or acquire ABM habitat within the City of Orange Beach or elsewhere within the ABM's range.

The standard mitigation and minimization measures to be implemented on the site include installing sea turtle-friendly lighting and tinted windows, landscaping with native vegetation, enhancing the frontal dune area, constructing a concrete driveway that will not disperse in a storm surge, implementing refuse-control measures during construction and requiring that future residents utilize such measures, and restoring ABM habitat after tropical storms. Free-roaming cats and the use of exterior rodenticide will be prohibited within the parcel. Post-construction ABM habitat on site should total 2.47 ac of the 2.79-ac parcel.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's proposed project, including land clearing, infrastructure building, landscaping, and the proposed mitigation and minimization measures, would individually and cumulatively have a minor effect on the Alabama beach mouse and the human environment. Therefore, we have preliminarily determined that the proposed ESA section 10(a)(1)(B) permit would be a ''low effect'' ITP that individually or cumulatively would have a minor effect on the ABM and may qualify for application of a categorical exclusion pursuant to the Council on Environmental Quality's NEPA regulations, DOI's NEPA regulations, and the DOI Departmental Manual. A ''low effect'' ITP is one that would result in (1) minor or nonsignificant effects on species covered in the HCP; (2) nonsignificant effects on the human environment; and (3) impacts that, when added together with the impacts of other past, present, and reasonable foreseeable actions, would not result in significant cumulative effects to the human environment.

Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the requested ITP. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number PER0109456 to James Bruckmann.

Authority

The Service provides this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500–1508 and 43 CFR 46).

William J. Pearson,

Field Supervisor, Alabama Ecological Service Field Office.

[FR Doc. 2023–08716 Filed 4–24–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2023–0045; FXES11140400000–234–FF04EF4000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink and Blue-Tailed Mole Skink; Osceola County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Legacy Westside Apartments, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed sand skink (*Neoseps reynoldsi*) and blue-tailed mole-skink (*Eumeces egregius lividus*) incidental to the construction and operation of a residential development in Osceola County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the Department of the Interior's (DOI) NEPA regulations, and the DOI Departmental Manual. To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

DATES: We must receive your written comments on or before May 25, 2023.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS–R4–ES–2023–0045, at *https://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by one of the following methods:

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2023–0045.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2023–0045; U.S. Fish and Wildlife Service; MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Alfredo Begazo, by U.S. mail (see **ADDRESSES**), by telephone at 772–469–4234, or by email at *alfredo_begazo@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application from Legacy Westside Apartments, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed sand skink (*Neoseps reynoldsi*) and blue-tailed mole-skink (*Eumeces egregius lividus*) (skinks) incidental to the construction and operation of a residential development in Osceola County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that this proposed ITP qualifies as low

effect and may qualify for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.4), the Department of the Interior's (DOI) NEPA regulations (43 CFR 46), and the DOI's Departmental Manual (516 DM 8.5(C)(2)). To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

Proposed Project

The applicant requests a 5-year ITP to take the two skink species via the conversion of approximately 2.86 acres (ac) of occupied nesting, foraging, and sheltering skink habitat incidental to the construction of a residential development on an 18.7-ac parcel, located in Section 7, Township 25 South, Range 27 East in Osceola County, Florida. The applicant proposes to mitigate for take of the skinks by purchasing credits equivalent to 5.72 ac of skink-occupied habitat from a Service-approved conservation bank. The Service would require the applicant to purchase the credits prior to engaging in any construction phase of the project.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's proposed project—including the construction of multiple apartments, driveway, parking space, green areas, stormwater pond, and associated infrastructure (*e.g.,* electric, water, and sewer lines)—would individually and cumulatively have a minor effect on the skinks and the environment. Therefore, we have preliminarily determined that the proposed ESA section 10(a)(1)(B) permit would be a ''low-effect'' ITP that individually or cumulatively would have a minor effect on the skinks and may qualify for application of a categorical exclusion pursuant to the Council on Environmental Quality's NEPA regulations, DOI's NEPA regulations, and the DOI Departmental Manual. A ''low-effect'' incidental take permit is one that would result in (1) minor or nonsignificant effects on species covered in the HCP; (2) nonsignificant effects on the human environment; and (3) impacts that, when added together with the impacts of other past, present, and reasonable foreseeable actions, would not result in significant cumulative effects to the human environment.

Next Steps

The Service will evaluate the application and the comments to determine whether to issue the requested ITP. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number PER0607408 to Legacy Westside Apartments, LLC.

Authority

The Service provides this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500–1508 and 43 CFR 46).

Robert L. Carey,

Division Manager, Environmental Review, Florida Ecological Services Office.

[FR Doc. 2023–08714 Filed 4–24–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2023–0042; FXIA16710900000–234–FF09A30000]

Endangered Species; Marine Mammals; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA).

ADDRESSES: Information about the applications for the permits listed in this notice is available online at *https://www.regulations.gov.* See **SUPPLEMENTARY INFORMATION** for details.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, by phone at 703–358–2185 or via email at *DMAFR@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have issued permits to conduct certain activities with endangered and threatened species in response to permit applications that we received under the authority of section 10(a)(1)(A) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and the Marine Mammal Protection Act, as amended (16 U.S.C. 1361 *et seq.*).

After considering the information submitted with each permit application and the public comments received, we issued the requested permits subject to certain conditions set forth in each permit. For each application for an endangered species, we found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

Availability of Documents

The permittees' original permit application materials, along with public comments we received during public comment periods for the applications, are available for review. To locate the application materials and received comments, go to *https://www.regulations.gov* and search for the appropriate permit number (*e.g.,* 12345C) provided in the following table:

Endangered Species

ePermit No.	Applicant	Permit issuance date
PER0048148	Clinton J. Grube	January 18, 2023.
PER0045915	Jon M. Jacobs	January 19, 2023.

ePermit No.	Applicant	Permit issuance date
PER0046159 ...	University of North Florida	January 19, 2023.
PER0055329 ...	William B. Taylor, Jr	January 30, 2023.
PER0056018 ...	Benjamin Caleb Wright	January 30, 2023.
PER0072655 ...	Brock David Huggins	February 07, 2023.
PER0072656 ...	Joseph Michael Dianda	February 07, 2023.
PER0072721 ...	Julie Dianda	February 07, 2023.
PER0076785 ...	Michael Dianda	February 07, 2023.
70482C	Geoffrey A. Corn	February 10, 2023.
PER0042576 ...	Cornell University Animal Health Diagnostic Center	February 15, 2023.

Marine Mammals

ePermit No.	Applicant	Permit issuance date
PER0037613 ...	Texas State Aquarium	February 27, 2023.

Authorities

We issue this notice under the authority of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act, as amended (16 U.S.C. 1361 *et seq.*), and their implementing regulations.

Timothy MacDonald,

Government Information Specialist, Branch of Permits, Division of Management Authority.

[FR Doc. 2023–08697 Filed 4–24–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX23LR000F60100; OMB Control Number 1028–0065/Renewal]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Production Estimate

AGENCY: Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is proposing to renew an Information Collection.

DATES: Interested persons are invited to submit comments on or before May 25, 2023.

ADDRESSES: Send your comments on this Information Collection Request (ICR) to the Office of Management and Budget's (OMB) Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0065 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Elizabeth S. Sangine by email at *escottsangine@usgs.gov,* or by telephone at 703–648–7720. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *https://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA, we provide the general 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 provides the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on January 30, 2023, 88 FR 5905–5906. We did not receive any public comments in response to that notice.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comments addressing the following issues: (1) is the collection necessary to the proper functions of the USGS minerals information mission; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how the USGS might enhance the quality, utility, and clarity of the information to be collected; and (5) how the USGS might minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: This collection is needed to provide data on mineral production for annual reports published by commodity for use by Government agencies, Congressional offices, educational institutions, research organizations, financial institutions, consulting firms, industry, academia, and the general public. These data and derived information will be published in the ''Mineral Commodity Summaries,'' the first preliminary publication to furnish estimates covering the previous year's nonfuel mineral industry.

Title of Collection: Production Estimate.

OMB Control Number: 1028–0065.

Form Numbers: USGS Forms 9–4042–A and 9–4124–A.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Business or Other For-Profit Institutions: U.S. nonfuel minerals consumers.

Total Estimated Number of Annual Respondents: 1,100.

Total Estimated Number of Annual Responses: 1,100.

Estimated Completion Time per Response: 15 minutes.

Total Estimated Number of Annual Burden Hours: 275.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually.

Total Estimated Annual Non-Hour Burden Cost: There are no ''non-hour cost'' burdens associated with this ICR.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authorities for this action are the PRA, the National Materials and Minerals Policy, Research and Development Act of 1980 (30 U.S.C. 1601 *et seq.*), the National Mining and Minerals Policy Act of 1970 (30 U.S.C. 21(a)), and the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 *et seq.*).

Steven Fortier,

Director, National Minerals Information Center, U.S. Geological Survey.

[FR Doc. 2023–08672 Filed 4–24–23; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX23GB00UM20200; OMB Control Number 1028–0133]

Agency Information Collection Activities; Earth Mapping Resources Initiative (Earth MRI) Competitive Cooperative Agreement Program With State Geological Surveys

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Office of the Secretary will seek Office of Management and Budget (OMB) approval of an extension of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before June 26, 2023.

ADDRESSES: Written comments and recommendations for the proposed clearance of a new information collection should be sent to Departmental Information Collection Clearance Officer, U.S. Department of the Interior, 1849 C Street NW, Washington, DC 20240; or by email to *DOI-PRA@ios.doi.gov.* Please reference OMB Control Number ''1028–0133 EarthMRI'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this Information Collection Request (ICR), contact James Mosley by telephone at (703) 648–6312, or by email at *jmosley@usgs.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval. We may not conduct or sponsor, nor are you required to respond to, a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burden, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: Public Law 117–58, Section 40201, ''*Earth Mapping Resources Initiative*'' contained in the Infrastructure Investment and Jobs Act [otherwise known as the Bipartisan Infrastructure Law (BIL)] authorizes and accelerates the mapping efforts of the Earth Mapping Resources Initiative (Earth MRI).

Earth MRI is a component of the U.S. Geological Survey (USGS) Mineral Resources Program and is a national effort to carry out the fundamental resources- and mapping mission of the USGS. The goal of Earth MRI is to modernize the surface- and subsurface geologic mapping of the United States, with a focus on identifying areas that may have the potential to contain mineral resources.

The BIL directed the USGS to accelerate efforts to carry out fundamental integrated topographic, geologic, geochemical, and geophysical mapping and provide interpretation of subsurface and above-ground (mine waste) critical-mineral resources data at a funding level of $320,000,000 annually for five years (FY2022–FY2026). The USGS developed a new competitive cooperative agreement program with the State geological surveys to support mine-waste activities authorized and funded by the BIL. State geological surveys apply for funds through an annual competitive agreement process. Individual State projects last for up to two years.

BIL Section 40201 stipulates that the USGS may enter into cooperative agreements with State geological surveys to accelerate the efforts of Earth MRI. The BIL requires the USGS to collect information necessary to ensure that cooperative-agreement funds authorized by this legislation are used in accordance with the BIL and Federal assistance requirements under 2 CFR 200. Information collected by Earth MRI as part of the consolidated workplan is described below. The USGS seeks Office of Management and Budget approval to continue to collect this information to manage and monitor cooperative agreement awards to comply with the BIL.

Title of Collection: Earth Mapping Resources Initiative (Earth MRI) Competitive Cooperative Agreement Program with State Geological Surveys.

OMB Control Number: 1028–0133.

Form Number: None.

Type of Review: Extension of an approved information collection.

Respondents/Affected Public: 25.

Responses: 73 (25 applications, 32 total six-month progress reports, and 16 final technical reports.)

Total Burden Hours: 2,076 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA (44 U.S.C. 3501 *et seq.*).

Sarah J. Ryker,

Associate Director for Energy and Mineral Resources, U.S. Geological Survey.

[FR Doc. 2023–08698 Filed 4–24–23; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_NV_FRN_MO4500167453]

Notice of Intent To Amend the Las Vegas Resource Management Plan and Prepare an Environmental Impact Statement for the Proposed Golden Currant Solar Project in Clark County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) Nevada State Director intends to prepare a Resource Management Plan amendment (RMPA) with an associated Environmental Impact Statement (EIS) for the Golden Currant Solar Project and by this notice is announcing the beginning of the scoping period to solicit public comments and identify issues, and is providing the planning criteria for public review.

DATES: The BLM requests the public submit comments concerning the scope of the analysis, potential alternatives, and identification of relevant information, and studies by June 9, 2023. To afford the BLM the opportunity to consider issues raised by commenters in the RMPA/EIS, please ensure your comments are received prior to the close of the 45-day scoping period or 15 days after the last public meeting, whichever is later.

The BLM will conduct two public scoping meetings (virtually):

- May 10, 2023, 6–8 p.m. Pacific Time, Virtual via Zoom. Registration is required. To register in advance for this webinar, visit: *https://us02web.zoom.us/webinar/register/WN_TTSUwNMlRvquIS0d5kV2rA.*
- May 11, 2023, 6–8 p.m. Pacific Time, Virtual via Zoom. Registration is required. To register in advance for this webinar, visit: *https://us02web.zoom.us/webinar/register/WN_1aKVxTCHShWKugCNOSQCvw.*

ADDRESSES: You may submit comments on issues and planning criteria related to the Golden Currant Solar Project by any of the following methods:

- *Website: https://eplanning.blm.gov/eplanning-ui/admin/project/2021533/510.*
- *Email: BLM_NV_SND_EnergyProjects@blm.gov.*
- *Mail:* BLM, Las Vegas Field Office, Attn: Golden Currant Solar Project, 4701 North Torrey Pines Drive, Las Vegas, NV 89130–2301.

Documents pertinent to this proposal may be examined online at the project ePlanning page: *https://eplanning.blm.gov/eplanning-ui/project/2019523/510* and at the Southern Nevada District Office.

FOR FURTHER INFORMATION CONTACT: Jessica Headen, Project Manager, telephone (702) 515–5206; address 4701 North Torrey Pines Drive, Las Vegas, NV 89130–2301; email *BLM_NV_SND_EnergyProjects@blm.gov.* Contact Ms. Headen to have your name added to our mailing list. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Ms. Headen. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM Nevada State Director intends to prepare an RMPA with an associated EIS for the Golden Currant Solar Project, announces the beginning of the scoping process, and seeks public input on issues and planning criteria. The RMPA is being considered to allow the BLM to evaluate the Golden Currant Solar Project, which would require amending the existing 1998 Las Vegas Resource Management Plan (RMP).

The proposed project and planning area is in Clark County, southeast of the Town of Pahrump and approximately 40 miles west of Las Vegas. The proposed project encompasses approximately 4,456 acres of public lands.

In August 2021, Noble Solar LLC submitted an updated right-of-way application to the BLM Las Vegas Field Office for the Golden Currant Solar Project (Project) requesting authorization to construct, operate, maintain, and eventually decommission a 400-megawatt photovoltaic solar electric generating facility, battery storage facilities, associated generation tie-line, and access road facilities. The electricity generated would be conveyed to the Trout Canyon Substation located north of the project site via a generation (gen-tie) transmission line. Construction for the facilities is estimated to take approximately 12 months. The lands within the proposed project area were segregated, subject to valid existing rights, for a term of two years beginning July 5, 2022, with publication of the Notice of Segregation in the **Federal Register**.

The scope of this land use planning process does not include addressing the evaluation or designation of areas of critical environmental concern (ACECs), and the BLM is not soliciting ACEC nominations as part of this process.

Purpose and Need

The BLM's purpose and need for this Federal action is to respond to right-of-way applications submitted by Noble Solar LLC under title V of FLPMA (43 U.S.C. 1761) to construct, operate, maintain, and decommission a solar generation power plant and ancillary facilities on approximately 4,456 acres of BLM land in Clark County, Nevada, in compliance with FLPMA, BLM right-of-way regulations, the BLM NEPA Handbook (BLM 2008), U.S. Department of the Interior NEPA regulations, and other applicable Federal and State laws and policies. In accordance with FLPMA, public lands are to be managed for multiple uses that takes into account the long-term needs of future generations for renewable and non-renewable resources. The BLM is authorized to grant rights-of-way on public lands for systems of generation, transmission, and distribution of electrical energy (FLPMA section 501(a)(4)). The preliminary purpose and need also includes an amendment to the 1998 Las Vegas RMP to realign designated utility corridors that

currently traverse the proposed project area.

Preliminary Alternatives

The Proposed Action is to approve rights-of-way to Noble Solar LLC to construct, operate, and eventually decommission the proposed solar project and associated facilities with the potential to generate 400 megawatts of alternating current energy on 4,456 acres of BLM administered lands. The Proposed Action also includes an amendment to the 1998 Las Vegas RMP to realign designated utility corridors that currently traverse the proposed project area.

West-Wide Energy Corridor Segment # 224–225, established under authority of Section 368 of the Energy Policy Act of 2005, traverses the central portion of the project area from east to west. In addition, a BLM Southern Nevada District designated utility corridor, established by the RMP, also traverses the central portion of the project area. Per 43 CFR 1610.5–3, the project must be in conformance with the RMP; therefore, a plan amendment to modify both utility corridors by realigning them outside of the Golden Currant Solar Project area would be required.

Additional action alternatives have not been identified to date but would be developed by taking into consideration comments and input submitted during the application evaluation determination process and scoping.

Under the No Action Alternative BLM would not issue a right-of-way grant for the solar project and associated facilities. The proposed Project would not be constructed, and existing land uses in the project area would continue. Additionally, the BLM would not undertake an RMPA to realign utility corridors. The BLM welcomes comments on all preliminary alternatives as well as suggestions for additional alternatives.

Planning Criteria

The planning criteria guide the planning effort and lay the groundwork for effects analysis by identifying the preliminary issues and their analytical frameworks. Preliminary issues for the planning area have been identified by BLM personnel and from early engagement conducted for this planning effort with Federal, State, and local agencies; Tribes; and other stakeholders. The BLM has identified preliminary issues for this planning effort's analysis. The planning criteria are available for public review and comment at the ePlanning website (see **ADDRESSES**).

Summary of Expected Impacts

The analysis in the EIS will be focused on the proposed solar project and associated facilities, including battery storage and transmission line construction. The BLM evaluated the proposed Project application per the variance process described in the Programmatic Environmental Impact Statement for Solar Energy Development in Six Southwestern States. Through this process, the BLM completed public outreach and coordination with agencies and Indian Tribal Nations specific to the proposed Project. From the input received, the expected impacts from construction, operation, and eventual decommissioning of the solar project, associated facilities, and the RMP amendment could include:

- Potential desert tortoise habitat disturbance and changes in genetic connectivity habitat from construction of the proposed facilities;
- Potential effects to cultural resources in the project area from construction activities;
- Potential effects to basin groundwater resources from the proposed construction water needs for the Project;
- Potential socioeconomic impacts from the proposed Project to local communities;
- Potential air quality impacts from proposed construction activities;
- Potential impacts to vegetation species from construction, operations, and decommissioning of the Project and associated facilities;
- Potential effects to the recreational opportunities and public use of the proposed Project area due to construction and operations of the solar facility;
- Potential effects to the Old Spanish National Historic Trail; and
- Potential cumulative effects from other reasonably foreseeable actions in the area.

Preliminary issues for the Project have been identified by the BLM, other Federal agencies, the State, local agencies, Tribes, and the public during the variance process. The following resources, or resource uses, have potential issues that will need to be analyzed in detail in the EIS: vegetation and soils, threatened and endangered species, air quality and climate, cultural and historic resources, water resources, access to public lands, socioeconomics, public health and safety, and proximity to Old Spanish National Historic Trail, and other reasonably foreseeable effects from other projects in the area. Habitat for the federally listed desert tortoise is in this project area.

Anticipated Permits and Authorizations

Along with a BLM right-of-way grant as required under 43 CFR 2801.9, Noble Solar LLC anticipates needing the following authorizations and permits for the proposed project: Biological Opinion and Incidental Take Permit from the U.S. Fish and Wildlife Service; Section 404 Permit from U.S. Army Corps of Engineers; Wildlife Special Purpose permit from Nevada Department of Wildlife; Nevada Division of Environmental Protection Stormwater and Groundwater Discharge permits and Temporary in Waterways Work permit; Nevada Public Utilities Commission Permit to Construct; Nevada Division of Water Resources water rights modification permits; Nevada State Fire Marshal Hazardous Materials Storage permit; and Clark County permits, as necessary. Further details on these permitting requirements may be found in the Plan of Development for the Golden Currant Solar Project.

Schedule for the Decision-Making Process

The BLM will provide additional opportunities for public participation consistent with the NEPA and land use planning processes, including a 90-day comment period on the Draft RMPA/EIS and a concurrent 30-day public protest period and 60-day Governor's consistency review on the Proposed RMPA and Final EIS. The Draft RMPA/EIS is anticipated to be available for public review in early 2024, and the Proposed RMPA and Final EIS is anticipated to be available for public protest in the summer of 2024 with an Approved RMPA and Record of Decision in the fall of 2024.

Public Scoping Process

This notice of intent initiates the scoping period and public review of the planning criteria, which guide the development and analysis of the Draft RMPA/EIS.

The BLM will be holding two virtual scoping meetings (see **DATES** and **ADDRESSES** sections earlier). The specific date(s) and location(s) of any additional scoping meetings will be announced at least 15 days in advance through the project ePlanning web page: *https://eplanning.blm.gov/eplanning-ui/admin/project/2021533/510.*

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives and mitigation measures, and to guide the process for developing the EIS. Federal, State, and local

agencies, along with other stakeholders that may be interested or affected by the BLM's decision on this project, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency. The BLM encourages comments concerning the proposed Golden Currant Solar Project and RMPA, possible measures to minimize and/or avoid adverse environmental impacts, and any other information relevant to the Proposed Action.

The BLM also requests assistance with identifying potential alternatives to the Proposed Action. As alternatives should resolve an issue with the Proposed Action, please indicate the purpose of the suggested alternative. In addition, the BLM requests the identification of potential issues that should be analyzed. Issues should be a result of the Proposed Action or Alternatives; therefore, please identify the activity along with the potential issues.

Lead and Cooperating Agencies

The BLM Las Vegas Field Office is the lead Federal agency for this RMPA and EIS and the related National Historic Preservation Act section 106 process. The following have agreed to participate in the environmental analysis of the Project as Cooperating Agencies: Clark County Department of Aviation, Nye County, U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, Nevada Department of Wildlife, and Nevada Division of Emergency Management. Twenty-one entities declined or did not respond to the BLM's offer to participate in the Project as a Cooperating Agency. Federal, State, and local agencies, Tribes, and stakeholders interested in the scoping process may request or be requested by the BLM, if eligible, to participate in the development of the EIS as a Cooperating Agency.

Responsible Official

The Nevada State Director is the deciding official for this planning effort and proposed Golden Currant Solar Project.

Nature of Decision To Be Made

The nature of the decision to be made will be the State Director's selection of land use planning decisions for managing BLM-administered lands under the principles of multiple use and sustained yield in a manner that best addresses the purpose and need.

The BLM will decide whether to grant, grant with conditions, or deny the right of way application. Pursuant to 43 CFR 2805.10, if the BLM issues right-of-way grant(s), the BLM decision maker may include terms, conditions, and stipulations determined to be in the public interest.

Interdisciplinary Team

The BLM will use an interdisciplinary approach to develop the EIS in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in this process: air quality, archaeology, botany, climate change, environmental justice, fire and fuels, geology/mineral resources, hazardous materials, hydrology, invasive/non-native species, lands and realty, National Conservation Lands, National Trails System, public health and safety, recreation/transportation, socioeconomics, soils, visual resources, and wildlife.

Additional Information

The BLM will identify, analyze, and consider mitigation to address the reasonably foreseeable impacts to resources from the proposed action and all analyzed reasonable alternatives and, in accordance with 40 CFR 1502.14(e), include appropriate mitigation measures not already included in the proposed action or alternatives. Mitigation may include avoidance, minimization, rectification, reduction or elimination over time, and compensation; and may be considered at multiple scales, including the landscape scale.

The BLM will utilize and coordinate the NEPA and land use planning processes for this planning effort to help support compliance with applicable procedural requirements under the Endangered Species Act (16 U.S.C. 1536) and Section 106 of the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3), including public involvement requirements of section 106. The information about historic and cultural resources and threatened and endangered species within the area potentially affected by the proposed plan amendment will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will consult with Indian Tribal Nations on a government-to-government basis in accordance with Executive Order 13175, BLM MS 1780, and other policies. Tribal concerns, including impacts on Tribal trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with Indian Tribal Nations, and other stakeholders that may be interested in or affected by the proposed action that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency. The BLM intends to hold a series of government-to-government consultation meetings. The BLM will send invitations to potentially affected Indian Tribal Nations prior to the meetings. The BLM will provide additional opportunities for government-to-government consultation during the NEPA process.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 40 CFR 1501.7, 43 CFR 1610.2, and 2800.)

Jon K. Raby,

Nevada State Director.

[FR Doc. 2023–08718 Filed 4–24–23; 8:45 am]

BILLING CODE 4331–21–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_AZ_FRN_MO4500170880]

Notice of Filing of Plats of Survey; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of the following described land were officially filed in the Bureau of Land Management (BLM), Arizona State Office, Phoenix, Arizona on the dates indicated. The surveys announced in this notice are necessary for the management of lands administered by the agency indicated.

ADDRESSES: These plats will be available for inspection in the Arizona State Office, Bureau of Land Management, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427. Protests of any of these surveys should be sent to the Arizona State Director at the above address.

FOR FURTHER INFORMATION CONTACT: Geoffrey Graham, Chief Cadastral Surveyor of Arizona; (623) 580–5579; *ggraham@blm.gov.* Individuals in the United States who are deaf, deafblind,

hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

The Gila and Salt River Meridian, Arizona

The plat, in one sheet, representing the survey of a portion of the south boundary of Township 40 North, Range 26 East (north boundary), a portion of the Sixth Guide Meridian East (west boundary), the east boundary, and the subdivisional lines, and the subdivision of certain sections, Township 39 North, Range 25 East, accepted May 24, 2022, and officially filed May 26, 2022, for Group 1213, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs.

The plat, in one sheet, representing the metes-and-bounds survey of the Canyon de Chelly National Monument boundary, partially surveyed Township 31 North, Range 27 East, accepted September 26, 2022, and officially filed September 28, 2022, for Group 1219, Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat, in two sheets, representing the dependent resurvey of a portion of the east and north boundaries, Township 5 North, Range 10 West, Navajo Special Meridian, the dependent resurvey of a portion of the Eighth Standard Parallel North through Ranges 26 and 27 East (north boundary), the dependent resurvey of a portion of the west boundary, the survey of the east boundary and a portion of the subdivisional lines, the subdivision of certain sections and the metes-and-bounds survey of the Canyon de Chelly National Monument boundary, Township 32 North, Range 27 East, accepted September 26, 2022, and officially filed September 28, 2022, for Group 1219, Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat, in one sheet, representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 20, Township 23 North, Range 30 East, accepted July 6, 2022, and officially filed July 8, 2022, for Group 1220, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs.

The plat, in one sheet, representing the dependent resurvey of a portion of the south boundary, a portion of the subdivisional lines, the subdivision of section 31, and a metes-and-bounds survey through sections 30 and 31, partially surveyed Township 6 South, Range 21 West, accepted November 29, 2022, and officially filed December 1, 2022, for Group 1218, Arizona.

This plat was prepared at the request of the United States Army.

The plat, in one sheet, representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of sections 5, 6 and 8, and a metes-and-bounds survey through Sections 5, 6 and 8, Township 7 South, Range 21 West, accepted November 29, 2022, and officially filed December 1, 2022, for Group 1218, Arizona.

This plat was prepared at the request of the United States Army.

A person or party who wishes to protest any of these surveys must file a written notice of protest within 30 calendar days from the date of this publication with the Arizona State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within 30 days after the protest is filed. Before including your address, or other personal information in your protest, please be aware that your entire protest, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. chap. 3.

Geoffrey Graham,

Chief Cadastral Surveyor of Arizona.

[FR Doc. 2023–08711 Filed 4–24–23; 8:45 am]

BILLING CODE 4331–12–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–SER–VIIS–35617; PS.SSELA386.00.1]

Land Exchange at Virgin Islands National Park

AGENCY: National Park Service, Interior.

ACTION: Notice of land exchange.

SUMMARY: The National Park Service has identified a federally owned parcel of land to be suitable for disposal by exchange. The selected Federal land to be exchanged is within the boundary of the Virgin Islands National Park (Park) but is not essential for administration of the park unit. The land was surveyed during a National Environmental Policy Act (NEPA)/Environmental Assessment process for cultural resources and endangered and threatened species.

DATES: The effective date of this boundary revision is April 25, 2023.

COMMENTS AND FURTHER INFORMATION: The comment period on the proposed exchange ends 45 days from the date of publication. Information may be obtained from or comments pertaining to this exchange should be addressed to Russell Webb, Supervisory Realty Specialist, *russell_webb@nps.gov* and at the above referenced address. Adverse comments will be evaluated, and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate, the land exchange will proceed as proposed.

Detailed information concerning this exchange including precise legal descriptions, Land Protection Plan, and environmental assessment are available at the Land Resources Program Office—National Park Service, 2975 Horseshoe Dr. S, Suite 800, Naples, Florida 34104. The documents specific to the Environmental Assessment/NEPA requirements and the Finding of No Significant Impact are located as follows: *https://parkplanning.nps.gov/StJohnLandExchange.*

SUPPLEMENTARY INFORMATION: The authority for this exchange is the Act of October 5, 1962, Public Law 87–750, Stat 746, Sec. 2, the Act of July 15, 1968 (54 U.S.C. 102901), and Title 31 V.I. Code § 231a (referred to and cited as the Virgin Islands School Land Exchange Act). The lands granted by the United States in the exchange should be of approximately equal value to the property being acquired and located within the authorized boundaries of the Park. Any difference must be corrected with monetary compensation.

Fee ownership to the federally-owned-land to be exchanged is described as follows: VIIS Tract 01–137A is an 11.3-acre parcel of land acquired by the United States of America by deed recorded in Deed Book 9–X on Page 266 at the District of St. Thomas, St. John Island Clerk's Office. The land is being conveyed in fee simple by a Quitclaim Deed with restrictive covenants and a discretionary right of reverter.

In exchange for the federally owned parcel of land, the United States of America will acquire a 17.97-acre parcel of land currently owned by The Territorial Government of the U.S. Virgin Islands (GVI) lying within the boundary of the Park. The land is being

acquired in fee simple with a discretionary right of reverter.

The exchange is necessary to benefit the Park by preserving an undeveloped dry tropical forest and to assist GVI in support of its primary educational needs by providing a suitable location for a future school on the island that was diminished substantially by hurricane damage years ago. Currently, students must commute by boat each day or relocate to St. Thomas during the school year to complete a public high school education.

Mark A. Foust,

Regional Director, Interior Region 2.

[FR Doc. 2023–08623 Filed 4–24–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Activision Blizzard, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Activision Blizzard, Inc.,* Civil Action No 1:23–cv–00895. On April 3, 2023, the United States filed a Complaint alleging that Activision Blizzard, Inc. (''Activision'') and the teams in the *Overwatch* and *Call of Duty* Leagues owned by Activision agreed to suppress wages for professional esports players through the imposition of a ''Competitive Balance Tax,'' which penalized any team that paid total annual compensation to its players above a certain threshold set by Activision, in violation of section 1 of the Sherman Act, 15 U.S.C. 1.

The proposed Final Judgment, filed at the same time as the complaint, requires Activision to certify that it has ended all rules in the *Overwatch* and *Call of Duty* Leagues that impose an upper threshold on compensation for any player or players in those leagues; prohibits Activision from reinstating or implementing any rule that imposes an upper limit on compensation for any player or players in any professional esports league owned or controlled by Activision; requires Activision to provide notice of the meaning and requirements of the Final Judgment to all teams and players in professional esports leagues owned or controlled by Activision; requires Activision to implement a revised antitrust compliance policy; and imposes cooperation and reporting requirements.

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 District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be submitted in English and directed to Chief, Civil Conduct Task Force, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 8600, Washington, DC 20530 (email address: *ATRJudgmentCompliance@usdoj.gov*).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 450 Fifth Street NW, Washington, DC 20530, *Plaintiff,* v. Activision Blizzard, Inc., 3100 Ocean Park Blvd., Santa Monica, California 90405, *Defendant.*

Civil Action No.: 1:23–cv–00895 (Cobb, J.)

Complaint

The United States of America brings this civil antitrust action against Activision Blizzard, Inc. (''Activision''). Activision, a leading video game developer, owns and operates professional esports leagues built around two of its most popular team-based games, *Overwatch* and *Call of Duty.* For years, Activision and the independently owned teams in each league agreed to impose a ''Competitive Balance Tax.'' The Tax, which effectively operated as a salary cap, penalized teams for paying esports players above a certain threshold and limited player compensation in these leagues. This conduct had the purpose and effect of limiting competition between the teams in each league for esports players and suppressed esports players' wages. This conduct violates section 1 of the Sherman Act, 15 U.S.C. 1, and should be enjoined.

I. Industry Background

1. Today, few pastimes in the United States match the popularity and cultural impact of video games. An estimated 60 percent of Americans report they play video games on a weekly basis, and total consumer spending on video games in the United States reportedly topped $56 billion in 2022. Today's video game fans are not just interested in *playing,* but *watching* others play their favorite games on streaming sites such as Twitch and YouTube.

2. Two of Activision's most popular multiplayer video games are *Overwatch* and *Call of Duty. Overwatch* became one of the best-selling video games in 2016, its first year of release, and has since attracted millions of players. Since the release of the original *Call of Duty* game in 2003, Activision has published 18 additional titles in the series and reportedly has sold more than 400 million units, making it one of the best-selling video game franchises in history.

3. To capitalize on the success of *Overwatch* and *Call of Duty,* Activision created two professional esports leagues that feature teams comprising the very best *Overwatch* and *Call of Duty* players in the world. Launched in 2018, Activision's *Overwatch* League currently has 20 city-based teams located across North America, Europe, and Asia. The popularity of Activision's *Overwatch* League has been a leading contributor to the growth of esports in the United States. Soon after, in 2020, Activision launched its *Call of Duty* League with twelve teams using the same city-based model as the *Overwatch* League.

4. The *Overwatch* and *Call of Duty* Leagues have generated hundreds of millions of dollars for Activision from franchise fees, sponsorship revenues, exclusive streaming deals with YouTube, and the *Overwatch* League's television broadcast deal with Disney (including subsidiaries ESPN and ABC). Millions of viewers around the world have tuned in to watch professional *Overwatch* and *Call of Duty* players compete in league matches. In the inaugural season of the *Overwatch* League, 107 million viewers streamed matches over Twitch. By the next year, it was the most watched esports league in the world with more than 75.9 million hours watched. The *Call of Duty* League's official streaming channels attract more than 15 million views per month, and more than 300,000 viewers tuned in to the inaugural league championship in 2020.

5. The *Overwatch* and *Call of Duty* Leagues, like other sports leagues, feature independently owned teams that not only compete to win matches, but also compete to hire and retain the best players. Because *Overwatch* and *Call of Duty* are both multiplayer, team-based games, teams in the *Overwatch* and *Call of Duty* Leagues must recruit and sign a roster of players who fill different roles within the game and can work with and complement their teammates' skills. Esports pros spend thousands of hours practicing and honing their skills for a chance to make a professional roster; once they sign with a team, many players train at least eight hours every day and up to 70 hours each week.

6. Esports athletes often have short careers as a result of the intense physical and mental toll of elite competition, and thus have limited time to maximize their earnings.

II. The Competitive Balance Tax Suppressed Competition Between the Teams for Esports Players and Suppressed Wages

7. From the inception of each league, Activision and the teams agreed to impose rules that had the purpose and effect of substantially lessening competition for players by suppressing player compensation. Under these rules, which Activision called the ''Competitive Balance Tax,'' teams were fined if their total player compensation exceeded a threshold set by Activision each year. For every dollar a team spent over that threshold, Activision would fine the team one dollar and distribute the collected sum pro rata to all non-offending teams in the league. For example, if Activision set a Competitive Balance Tax threshold of $1 million, a team that spent $1.2 million on player compensation in a season would pay a $200,000 fine, which would be distributed to the other teams.

8. Teams recognized that their spending on player compensation would have been higher absent the Competitive Balance Tax. The Tax minimized the risk that one team would substantially outbid another for a player. The Tax not only harmed the highest-paid players, but also depressed wages for all players on a team. For example, if a team wanted to pay a large salary to one player, the team would have to pay less to the other players on the team to avoid the Tax. Teams also understood that the Tax incentivized their competitors to limit player compensation in the same way, further exacerbating the Tax's anticompetitive effects.

9. While players in other professional sports leagues have agreed to salary restrictions as part of collective bargaining agreements, the players in Activision's esports leagues are not members of a union and never negotiated or bargained for these rules.

10. In October 2021, as a result of the Department of Justice's investigation into the Competitive Balance Tax, Activision issued memoranda to all teams in the *Overwatch* and *Call of Duty* Leagues announcing that it would no longer implement or enforce a Competitive Balance Tax in either league.

11. The agreements between Activision and the teams in the *Overwatch* and *Call of Duty* Leagues to impose the Competitive Balance Tax constituted an unreasonable restraint of trade in violation of section 1 of the Sherman Act, 15 U.S.C. 1. Activision should be enjoined from implementing the Competitive Balance Tax or any similar rule or restraint that, directly or indirectly, imposes an upper limit on compensation for any player or players in any professional esports league that Activision owns or controls.

III. Jurisdiction and Venue

12. Activision is engaged in interstate commerce and in activities substantially affecting interstate commerce. Activision transacts business throughout the United States. *Overwatch* League and *Call of Duty* League are international professional esports leagues owned by Activision, and each league consists of independently owned city-based teams located across the United States and other parts of the world, including an *Overwatch* League team located in Washington, DC.

13. This Court has subject matter jurisdiction under 28 U.S.C. 1331, 28 U.S.C. 1337, and section 4 of the Sherman Act, 15 U.S.C. 4, to prevent and restrain Activision from violating section 1 of the Sherman Act, 15 U.S.C. 1.

14. Activision has consented to venue and personal jurisdiction in the District of Columbia. Venue is also proper in this judicial district under section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391.

IV. Defendant Activision Blizzard

15. Defendant Activision is a Delaware corporation headquartered in Santa Monica, California. Activision is a video game developer and publisher whose business includes the video game franchises *Overwatch* and *Call of Duty,* and the respective esports leagues for both franchises.

V. Violation Alleged (Violation of Section 1 of the Sherman Act)

16. The United States repeats and realleges paragraphs 1 through 15 as if fully set forth herein.

17. Activision's agreements with teams in the *Overwatch* and *Call of Duty* Leagues to impose the Competitive Balance Tax violated section 1 of the Sherman Act, 15 U.S.C. 1. The Competitive Balance Tax substantially lessened competition between teams in the *Overwatch* and *Call of Duty* Leagues for esports players and limited the players' compensation.

18. There is a reasonable expectation that the offense will recur unless the requested relief is granted.

VI. Requested Relief

19. The United States requests that this Court:

a. adjudge that Activision's agreements with teams in the *Overwatch* and *Call of Duty* Leagues to implement the Competitive Balance Tax rules are unlawful under section 1 of the Sherman Act, 15 U.S.C. 1;

b. permanently enjoin and restrain Activision from agreeing to or enforcing any rule that would, directly or indirectly, impose an upper limit on compensation for any player or players in any professional esports league that Activision owns or controls, including any rule that requires or incentivizes any team to impose an upper limit on its players' compensation or imposes a tax, fine, or other penalty on any team as a result of exceeding a certain amount of compensation for its players, and requiring Activision to take such internal measures as are necessary to ensure compliance with that injunction; and

c. award the United States such other relief as the Court may deem just and proper to redress and prevent recurrence of the alleged violations and to remedy the anticompetitive effects of the illegal agreements entered into by Activision.

Dated: April 3, 2023

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA,

JONATHAN S. KANTER (D.C. Bar #473286),
Assistant Attorney General for Antitrust.

DOHA MEKKI,
Principal Deputy Assistant Attorney General for Antitrust.

MICHAEL B. KADES,
Deputy Assistant Attorney General for Antitrust.

RYAN DANKS,
Director of Civil Enforcement.

MIRIAM R. VISHIO (D.C. Bar #482282),
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ERIC D. DUNN,
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Acting Chief, Civil Conduct Task Force.
LARA TRAGER,
Acting Assistant Chief, Civil Conduct Task Force.

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United States District Court for the District of Columbia

United States of America, *Plaintiff,* v. Activision Blizzard, Inc., *Defendant.*

Case No.: 1:23–cv–00895 (Cobb, J.)

[Proposed] Final Judgment

Whereas, Plaintiff, the United States of America, filed its Complaint on April 3, 2023, alleging that Defendant Activision Blizzard, Inc. violated section 1 of the Sherman Act, 15 U.S.C. 1;

And whereas, the United States and Defendant have consented to the entry of this Final Judgment (''Final Judgment'') without the taking of testimony, without trial or adjudication of any issue of fact or law, without the Final Judgment constituting any evidence against or admission by any party relating to any issue of fact or law, and without Defendant admitting liability, wrongdoing, or the truth of any allegations in the Complaint;

And whereas, Defendant represents that it ceased enforcement of the ''Competitive Balance Tax,'' a rule in the *Call of Duty* League and *Overwatch* League that required any Team that exceeded an upper threshold of Compensation to pay a tax to be distributed to all other Teams not exceeding that threshold, and agrees to undertake certain additional actions and refrain from certain conduct for the purpose of remedying the anticompetitive effects alleged in the Complaint;

And whereas, Defendant represents that the relief required by the Final Judgment can and will be made and that Defendant will not later raise a claim of hardship or difficulty as grounds for asking the Court to modify any provision of the Final Judgment;

Now therefore, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendant under section 1 of the Sherman Act, 15 U.S.C. 1.

II. Definitions

As used in the Final Judgment:

A. ''Activision'' and ''Defendant'' mean Activision Blizzard, Inc., a Delaware corporation with its headquarters in Santa Monica, California, its successors and assigns, and its subsidiaries (including The *Overwatch* League, LLC and The *Call of Duty* League, LLC), divisions, groups, affiliates, partnerships, and joint ventures, and their owner(s) and operator(s), directors, officers, managers, agents, representatives, and employees.

B. ''Agreement'' means any contract, arrangement, or understanding, formal or informal, oral or written, between two or more persons.

C. ''Compensation'' means all forms of wages, bonuses, and other payment for work rendered, and benefits, including housing and meal payments, insurance coverage, paid time off, vacation or personal leave, and annual or sick leave, but not including any (i) prize pool to be awarded by Defendant or Defendant's licensee to any Teams or players in any Professional Esports League, or (ii) marketing or promotional funding to be provided by Defendant or Defendant's licensee to any Teams or players in any Professional Esports League.

D. ''Esports Personnel'' means all officers of Defendant, and anyone employed by Defendant who is involved in the business or operations of any Professional Esports League.

E. ''Including'' means including, but not limited to.

F. ''Non-statutory Labor Exemption'' means the common law exemption from scrutiny under the antitrust laws that applies to concerted action or agreements imposed through the collective bargaining process between unions and nonlabor parties, as set forth in *Brown* v. *Pro Football, Inc.,* 518 U.S. 231 (1996), and related decisional law.

G. ''Person'' means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, governmental unit, or other legal entity.

H. ''Professional Esports League'' means any league in which video game players receive Compensation to compete for teams against other teams in a league format, where such league (i) is owned or controlled by Defendant, including the *Call of Duty* League and the *Overwatch* League; or (ii) features any video game owned or controlled by Defendant and as to which Defendant determines the rules regarding player Compensation, but excluding any amateur tournament or any league that operates entirely outside the United States.

I. ''Team'' means any team in any Professional Esports League, including its owner(s) and operator(s), directors, officers, managers, agents, representatives, and employees.

J. The ''Call of Duty League'' means the Professional Esports League featuring the video game *Call of Duty* (including all versions, sequels, and offshoots of the game), its owner(s) and operator(s), directors, officers, managers, agents, representatives, and employees.

K. The ''Overwatch League'' means the Professional Esports League featuring the video game *Overwatch* (including all versions, sequels, and offshoots of the game), its owner(s) and operator(s), directors, officers, managers, agents, representatives, and employees.

III. Applicability

The Final Judgment applies to Defendant and all other Persons in active concert or participation with Defendant who receive actual notice of the Final Judgment.

IV. Prohibited Conduct

A. Defendant must not impose any rule that would, directly or indirectly, impose an upper limit on Compensation for any player or players in any Professional Esports League, including any rule that requires or incentivizes any Team to impose an upper limit on its players' Compensation or imposes a tax, fine, or other penalty on any Team as a result of exceeding a certain amount of Compensation for its players.

V. Conduct Not Prohibited

A. Nothing in section IV prohibits Defendant from implementing any rule or engaging in any conduct covered by any applicable labor exemption (*e.g.,* the Non-statutory Labor Exemption).

B. Nothing in section IV prohibits Defendant from determining the Compensation to be paid to its own employees, including player employees of Teams in any Professional Esports League in which Defendant owns all of the Teams.

VI. Required Conduct

A. Within 20 days of entry of the Final Judgment, Defendant must certify in an affidavit from a senior legal officer that it has ended and will not implement or reinstate any rule that, directly or indirectly, imposes an upper

limit on Compensation for any player or players in any Professional Esports League, including any rule that requires or incentivizes any Team to impose an upper limit on its players' Compensation or imposes a tax, fine, or other penalty on any Team as a result of exceeding a certain amount of Compensation for its players.

B. Within 20 days of entry of the Final Judgment, Defendant must (i) identify or appoint a senior legal officer responsible for the supervision of Defendant's compliance with the terms and conditions of the Final Judgment and communicate to the United States all certifications and reports required by the Final Judgment, and (ii) provide to the United States the officer's name, business address, telephone number, and email address. Within 30 days of the departure of the designated senior legal officer or within 30 days of a decision by Defendant to identify or appoint a replacement, Defendant must provide to the United States the replacement officer's name, business address, telephone number, and email address. Defendant's initial identification or appointment of a senior legal officer, and identification or appointment of any replacement senior legal officer, are subject to the approval of the United States, in its sole discretion.

C. Any senior legal officer identified or appointed in accordance with this section VI must be an active member in good standing of the bar in any U.S. jurisdiction and must have, or must retain outside counsel who has, at least five years of legal experience, including experience with antitrust matters.

D. The Defendant and senior legal officer must:

1. within 30 days of entry of the Final Judgment, provide to all Esports Personnel, a director, officer, or manager of each Team, and, to the extent roster and contact information is known to Defendant, all players in all Professional Esports Leagues (i) a copy of the Final Judgment and the Competitive Impact Statement filed in this action, and (ii) in a manner to be devised by Defendant and approved by the United States, in its sole discretion, notice of the meaning and requirements of the Final Judgment;

2. within 30 days of entry of the Final Judgment, implement (i) a revised antitrust compliance policy, which must be approved by the United States, in its sole discretion, and (ii) a whistleblower protection policy, which must be approved by the United States, in its sole discretion, and which provides that any Person may disclose information concerning any violation or potential violation of the Final Judgment or the antitrust laws to the senior legal officer identified or appointed under this section VI, without reprisal for such disclosure;

3. annually provide to all Esports Personnel notice of the meaning and requirements of the Final Judgment, in a manner to be devised by Defendant and approved by the United States, in its sole discretion, and the antitrust compliance and whistleblower protection policies implemented pursuant to Paragraph VI(D)(2);

4. provide any Person who becomes an Esports Personnel, within 30 days of their assuming such role, (i) a copy of the Final Judgment and the Competitive Impact Statement filed in this action, (ii) notice of the meaning and requirements of the Final Judgment, in a manner to be devised by Defendant and approved by the United States, in its sole discretion, and (iii) the antitrust compliance and whistleblower protection policies implemented pursuant to Paragraph VI(D)(2);

5. obtain from all Esports Personnel, within 30 days of each such Person's receipt of the Final Judgment, a written certification that each such Person (i) has read and understands and agrees to abide by the terms of the Final Judgment, (ii) is not aware of any violation of the Final Judgment that has not been reported to Defendant, and (iii) understands that any failure to comply with the Final Judgment may result in an enforcement action for civil or criminal contempt of court against Defendant or any Person who violates the Final Judgment;

6. annually provide to a director, officer, or manager of each Team (i) a copy of the Final Judgment and the Competitive Impact Statement filed in this action, and (ii) notice of the meaning and requirements of the Final Judgment, in a manner to be devised by Defendant and approved by the United States, in its sole discretion;

7. in the event of a change of control of any Team, provide to a director, officer, or manager of that Team, within 30 days of any such change of control, (i) a copy of the Final Judgment and the Competitive Impact Statement filed in this action, and (ii) notice of the meaning and requirements of the Final Judgment, in a manner to be devised by Defendant and approved by the United States, in its sole discretion; and

8. certify in writing to the United States annually 30 days after the anniversary date of the entry of the Final Judgment that Defendant has complied with the provisions of the Final Judgment, with such writing including: (i) a list identifying all Esports Personnel and other Persons who received the materials required by Paragraphs VI(D)(3)–(7); and (ii) copies of all certifications obtained under Paragraph VI(D)(5).

E. Upon learning of any violation or potential violation of any of the terms and conditions contained in the Final Judgment, Defendant must:

1. promptly take appropriate action to terminate or modify the activity so as to comply with the Final Judgment;

2. maintain all documents related to any violation or potential violation of the Final Judgment for the duration of the Final Judgment;

3. within 30 days of learning of any violation or potential violation of any of the terms and conditions contained in the Final Judgment, file with the United States a statement describing the violation or potential violation and any steps Defendant has taken to address the violation or potential violation; and

4. at the United States' request, furnish to the United States a log of all documents maintained under Paragraph VI(F)(2), including identifying any such documents for which Defendant claims protection under the attorney-client privilege or the attorney work product doctrine.

VII. Compliance Inspection

A. For the purposes of determining or securing compliance with the Final Judgment or of determining whether the 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 Defendant, Defendant 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 Defendant's office hours to inspect and copy, or at the option of the United States, to require Defendant to provide electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendant relating to any matters contained in the Final Judgment; and

2. to interview, either informally or on the record, Defendant's officers, employees, or agents, who may have their individual counsel present, relating to any matters contained in the Final Judgment. The interviews must be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendant.

B. For the purposes of determining or securing compliance with the Final Judgment or of determining whether the Final Judgment should be modified or vacated, upon the written request of an

authorized representative of the Assistant Attorney General for the Antitrust Division, Defendant must submit written reports or respond to written interrogatories, under oath if requested, relating to any matters contained in the Final Judgment.

VIII. Public Disclosure

A. No information or documents obtained pursuant to any provision the Final Judgment 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 the Final Judgment, or as otherwise required by law.

B. In the event of a request by a third party, pursuant to the Freedom of Information Act, 5 U.S.C. 552, for disclosure of information obtained pursuant to any provision of the Final Judgment, the Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 CFR part 16, including the provision on confidential commercial information, at 28 CFR 16.7. When submitting information to the Antitrust Division, Defendant should designate the confidential commercial information portions of all applicable documents and information under 28 CFR 16.7. Designations of confidentiality expire 10 years after submission, ''unless the submitter requests and provides justification for a longer designation period.'' *See* 28 CFR 16.7(b).

C. If at the time that Defendant furnishes information or documents to the United States pursuant to any provision of the Final Judgment, Defendant 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 Defendant 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 Defendant 10 calendar days' notice before divulging the material in any legal proceeding (other than a grand jury proceeding).

IX. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to the Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe the Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

X. Enforcement of Final Judgment

A. The United States retains and reserves all rights to enforce the provisions of the Final Judgment, including the right to seek an order of contempt from the Court. Defendant agrees that in a civil contempt action, a motion to show cause, or a similar action brought by the United States relating to an alleged violation of the Final Judgment, the United States may establish a violation of the Final Judgment and the appropriateness of a remedy therefor by a preponderance of the evidence, and Defendant waives any argument that a different standard of proof should apply.

B. The Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore the competition the United States alleges was harmed by the challenged conduct. Defendant agrees that it may be held in contempt of, and that the Court may enforce, any provision of the 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 the Final Judgment should not be construed against either party as the drafter.

C. In an enforcement proceeding in which the Court finds that Defendant has violated the Final Judgment, the United States may apply to the Court for an extension of the Final Judgment, together with other relief that may be appropriate. In connection with a successful effort by the United States to enforce the Final Judgment against Defendant, whether litigated or resolved before litigation, Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as all other costs including experts' fees, incurred in connection with that effort to enforce the Final Judgment, including in the investigation of the potential violation.

D. For a period of four years following the expiration of the Final Judgment, if the United States has evidence that Defendant violated the Final Judgment before it expired, the United States may file an action against Defendant in this Court requesting that the Court order: (1) Defendant to comply with the terms of the 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 Defendant complies with the terms of the Final Judgment; and (4) fees or expenses as called for by this section X.

XI. Expiration of Final Judgment

Unless this Court grants an extension, the Final Judgment will expire five years from the date of its entry, except that the Final Judgment may be terminated earlier upon notice by the United States to the Court and Defendant that continuation of the Final Judgment is no longer necessary or in the public interest. All requirements, including all notice, certification, and reporting requirements imposed by section VI.D, shall terminate automatically upon the expiration of this Final Judgment.

XII. Reservation of Rights

The Final Judgment terminates only the claims expressly stated in the Complaint. The Final Judgment does not in any way affect any other charges or claims filed by the United States subsequent to the commencement of this action.

XIII. Notice

For purposes of the Final Judgment, any notice or other communication required to be filed with or provided to the United States must be sent to the address set forth below (or such other address as the United States may specify in writing to Defendant): Chief, Civil Conduct Task Force, U.S. Department of Justice, Antitrust Division, 450 Fifth Street, Washington, DC 20530, *ATRJudgmentCompliance@usdoj.gov*.

XIV. Public Interest Determination

Entry of the 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 the Final Judgment and the Competitive Impact Statement, public comments thereon, and any response to comments by the United States. Based upon the record before the Court, which includes the Competitive Impact Statement and, if applicable, any comments and response to comments filed with the Court, entry of the Final Judgment is in the public interest.

Date: ____, 2023

[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 District of Columbia

United States of America, *Plaintiff,* v. Activision Blizzard, Inc., *Defendant.*

Civil Action No.: 1:23–cv–00895 (Cobb, J.)

Competitive Impact Statement

In accordance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (the ''APPA'' or ''Tunney Act''), the United States of America files this Competitive Impact Statement related to the proposed Final Judgment filed in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On April 3, 2023, the United States filed a civil antitrust Complaint against Activision Blizzard, Inc. (''Activision'' or ''Defendant''), which owns the *Overwatch* and *Call of Duty* professional esports leagues. The United States alleged that Activision and the independently owned teams in these leagues agreed to impose a ''Competitive Balance Tax,'' (or the ''Tax'') which substantially lessened competition between the teams for esports players. The Tax, which effectively operated as a salary cap, imposed a fine on any team whose total annual player compensation exceeded a threshold set by Activision. Activision would then distribute the collected sum of such fines to the other teams in the league that had not exceeded the threshold. The Complaint alleges that the Tax had the purpose and effect of limiting competition between the teams in each league for esports players and suppressed esports players' wages, in violation of section 1 of the Sherman Act, 15 U.S.C. 1.

The Complaint seeks injunctive relief to prevent Activision from agreeing to or enforcing any rule that would, directly or indirectly, impose an upper limit on compensation for any player or players in any professional esports leagues that Activision owns or controls.

At the same time the Complaint was filed, the United States filed a proposed Final Judgment and Stipulation and Order, which are designed to remedy the anticompetitive effects alleged in the Complaint.

The proposed Final Judgment, which is explained more fully below, imposes the following obligations on Activision:

- Activision must certify that it has ended all rules in the *Overwatch* and *Call of Duty* Leagues that impose an upper limit on player compensation;
- Activision is prohibited from reinstating or implementing any rule that imposes an upper limit on player compensation in any professional esports leagues it owns or controls;
- Activision must provide notice of the meaning and requirements of the Final Judgment to all teams and players in professional esports leagues it owns or controls;
- Activision must implement a revised antitrust compliance policy and a whistleblower protection policy; and
- Activision must remedy and report to the United States any violation or potential violation of the Final Judgment and cooperate with the United States for the purposes of determining or securing compliance with the Final Judgment.

Under the terms of the Stipulation and Order, Activision must abide by and comply with the provisions of the proposed Final Judgment until it is entered by the Court or until expiration of the time for all appeals of any Court ruling declining entry of the proposed Final Judgment.

The United States and Activision have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. 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. Activision's Professional Esports Leagues

Activision is a leading video game developer and publisher, which owns and operates professional esports leagues built around two of its most popular multiplayer video game franchises, *Overwatch* and *Call of Duty.* Activision is incorporated in Delaware and headquartered in Santa Monica, California.

Overwatch became one of the best-selling video games in 2016, its first year of release, and has since attracted millions of players. Since the release of the original *Call of Duty* game in 2003, Activision has published 18 additional titles in the series and reportedly has sold more than 400 million units, making it one of the best-selling video game franchises in history.

To capitalize on the success of *Overwatch* and *Call of Duty,* Activision created two professional esports leagues that feature teams comprising the very best *Overwatch* and *Call of Duty* players in the world. Launched in 2018, Activision's *Overwatch* League currently has 20 city-based teams located across North America, Europe, and Asia. The popularity of Activision's *Overwatch* League has been a leading contributor to the growth of esports in the United States. Soon after, in 2020, Activision launched its *Call of Duty* League with 12 teams using the same city-based model as the *Overwatch* League.

The *Overwatch* and *Call of Duty* Leagues have generated hundreds of millions of dollars for Activision from franchise fees, sponsorship revenues, exclusive streaming deals with YouTube, and the *Overwatch* League's television broadcast deal with Disney (including subsidiaries ESPN and ABC). Millions of viewers around the world have tuned in to watch professional *Overwatch* and *Call of Duty* players compete in league matches. In the inaugural season of the *Overwatch* League, 107 million viewers streamed matches over Twitch. By the next year, it was the most watched esports league in the world with more than 75.9 million hours watched. The *Call of Duty* League's official streaming channels attract more than 15 million views per month, and more than 300,000 viewers tuned in to the inaugural league championship in 2020.

The *Overwatch* and *Call of Duty* Leagues, like other sports leagues, feature independently owned teams that not only compete to win matches, but also compete to hire and retain the best players. Because *Overwatch* and *Call of Duty* are both multiplayer, team-based games, teams in the *Overwatch* and *Call of Duty* Leagues must recruit and sign a roster of players who fill different roles within the game and can work with and complement their teammates' skills. Esports athletes spend thousands of hours practicing and honing their skills for a chance to make a professional roster; once they sign with a team, many players train at least eight hours every day and up to 70 hours each week.

Esports athletes often have short careers as a result of the intense physical and mental toll of elite competition, and thus have limited time to maximize their earnings.

B. The Unlawful Agreements

The Complaint alleges that Activision and the teams in the *Overwatch* and *Call of Duty* Leagues engaged in unlawful conduct that suppressed compensation for professional esports players in those leagues. From the inception of each league, Activision and the teams agreed to impose rules that had the purpose and effect of substantially lessening competition for players by suppressing player compensation. Under these rules, which Activision called the ''Competitive Balance Tax,'' teams were

fined if their total player compensation exceeded a threshold set by Activision each year. For every dollar a team spent over that threshold, Activision would fine the team one dollar and distribute the collected sum pro rata to all non-offending teams in the league. For example, if Activision set a Competitive Balance Tax threshold of $1 million, a team that spent $1.2 million on player compensation in a season would pay a $200,000 fine, which Activision would then distribute to the other teams.

The Complaint alleges that teams recognized that their spending on player compensation would have been higher absent the Competitive Balance Tax. The Tax minimized the risk that one team would substantially outbid another for a player. The Tax not only harmed the highest-paid players, but also depressed wages for all players on a team. For example, if a team wanted to pay a large salary to one player, the team would have to pay less to the other players on the team to avoid the Tax. Teams also understood that the Tax incentivized their competitors to limit player compensation in the same way, further exacerbating the Tax's anticompetitive effects. While players in other professional sports leagues have agreed to salary restrictions as part of collective bargaining agreements, the players in Activision's esports leagues are not members of a union and never negotiated or bargained for these rules.

The Complaint further alleges that, in October 2021, as a result of the Department of Justice's investigation into the Competitive Balance Tax, Activision issued memoranda to all teams in the *Overwatch* and *Call of Duty* Leagues announcing that it would no longer implement or enforce a Competitive Balance Tax in either league.

III. Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment closely track the relief sought in the Complaint and are intended to provide prompt, certain, and effective remedies that will ensure that Activision will not agree to or enforce any rule that would, directly or indirectly, impose an upper limit on compensation for any player or players in any professional esports league that Activision owns or controls. The requirements and prohibitions in the proposed Final Judgment will ensure that Activision has terminated its illegal conduct and prevent recurrence of the same or similar conduct. The proposed Final Judgment protects competition and workers by putting a stop to the anticompetitive esports player compensation restrictions alleged in the Complaint.

A. Prohibited Conduct

The proposed Final Judgment broadly prohibits Activision from imposing a ''Competitive Balance Tax'' rule or any similar rule or restraint in professional esports leagues that it owns or controls. Specifically, section IV of the proposed Final Judgment ensures that Activision will not impose any rule that would, directly or indirectly, impose an upper limit on compensation for any player or players in any professional esports league owned or operated by Activision, including any rule that requires or incentivizes any professional esports team to impose an upper limit on its players' compensation or imposes a tax, fine, or other penalty on any professional esports team as a result of exceeding a certain amount of compensation for its players. Paragraph II(A) of the proposed Final Judgment provides that these prohibitions will continue to apply to Activision's ''successors and assigns.''

B. Conduct Not Prohibited

Section V clarifies that the proposed Final Judgment does not prohibit Activision from imposing compensation restrictions in certain limited and specified circumstances. Paragraph V(A) states that the proposed Final Judgment does not prohibit Activision from engaging in conduct protected by any applicable labor exemption to the antitrust laws. Paragraph V(B) states that the proposed Final Judgment does not prohibit Activision from determining the compensation to be paid to its own employees.

C. Required Conduct

Sections VI and VII of the proposed Final Judgment impose requirements on Activision to prevent recurrence of the anticompetitive conduct and to ensure compliance with the terms of the Final Judgment. Under Paragraph VI(A) of the proposed Final Judgment, Activision must certify in an affidavit from a senior legal officer that (1) it has ended all rules that impose an upper threshold on compensation for any player or players in any professional esports leagues that Activision owns or controls, and (2) it will not implement or reinstate any such rules in any professional esports leagues that it owns or controls.

Under section VI of the proposed Final Judgment, Activision must designate a senior legal officer who is responsible for supervising Activision's compliance with the Final Judgment. Among the duties required by Paragraph VI(D) of the proposed Final Judgment, the senior legal officer will be required to distribute copies of the Final Judgment, this Competitive Impact Statement, and notice of the meaning and requirements of the Final Judgment to (1) Activision's officers and any employees involved with Activision's esports business, (2) a director, officer, or manager of each team in Activision's professional esports leagues, and (3) all players in Activision's professional esports leagues. The senior legal officer must also implement a revised antitrust compliance policy and whistleblower protection policy at Activision.

Under Paragraph VI(D)(8), Activision must annually certify compliance with the Final Judgment. Paragraph VI(E) requires Activision to remedy and report to the United States any violation or potential violation of the Final Judgment.

Finally, section VII requires Activision to provide the United States with information and access to company records and employees for the purpose of determining or securing compliance with the Final Judgment.

D. Enforcement of Final Judgment

The proposed Final Judgment also contains provisions designed to promote compliance with and make enforcement of the Final Judgment as effective as possible. Paragraph X(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, Defendant has 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 Defendant has 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 X(B) provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment is intended to remedy the loss of competition the United States alleges would otherwise be caused by the challenged conduct. Defendant agrees that it will abide by the proposed Final Judgment and that it may be held in contempt of the Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as

interpreted in light of this procompetitive purpose.

Paragraph X(C) provides that if the Court finds in an enforcement proceeding that Defendant has violated the Final Judgment, the United States may apply to the Court for an extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the Final Judgment, Paragraph X(C) provides that, in any successful effort by the United States to enforce the Final Judgment against Defendant, whether litigated or resolved before litigation, Defendant must reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with that effort to enforce this Final Judgment, including the investigation of the potential violation.

Paragraph X(D) states that the United States may file an action against 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 XI of the proposed Final Judgment provides that the Final Judgment will expire five years from the date of its entry, except that the Final Judgment may be terminated earlier upon notice by the United States to the Court and Defendant that continuation of the Final Judgment is no longer necessary or in the public interest.

IV. Remedies Available to Potential Private Plaintiffs

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment neither impairs nor assists the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendant.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendant 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, the comments and the United States' responses will be published in the **Federal Register** unless the Court agrees that the United States instead may publish them on the U.S. Department of Justice, Antitrust Division's internet website.

Written comments should be submitted in English to: Chief, Civil Conduct Task Force, Antitrust Division, United States Department of Justice, 450 Fifth St. NW, Suite 8600, Washington, DC 20530.

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 Activision. The United States is satisfied, however, that the relief required by the proposed Final Judgment will ensure that the anticompetitive conduct alleged in the Complaint is terminated and not reinstated by Activision and will restore the benefits of competition to players in professional esports leagues owned or operated by Activision. 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.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

Under the Clayton Act and APPA, proposed Final Judgments, or ''consent decrees,'' in antitrust cases brought by the United States are subject to a 60-day comment period, after which the Court 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. *U.S. Airways Grp., Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a proposed Final Judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether

the mechanisms to enforce the final judgment are clear and manageable'').

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the 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) (quotation marks omitted); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Instead, ''[t]he balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first instance, to the discretion of the Attorney General.'' *W. Elec. Co.,* 993 F.2d at 1577 (quotation marks omitted). ''The court should also bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is the one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest.'' *Microsoft,* 56 F.3d at 1460 (quotation marks omitted); *see also United States* v. *Deutsche Telekom AG,* No. 19–2232 (TJK), 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020). More demanding requirements would ''have enormous practical consequences for the government's ability to negotiate future settlements,'' contrary to congressional intent. *Microsoft,* 56 F.3d at 1456. ''The Tunney Act was not intended to create a disincentive to the use of the consent decree.'' *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g., Microsoft,* 56 F.3d at 1461 (recognizing courts should give ''due respect to the Justice Department's . . . view of the nature of its case''); *United States* v. *Iron Mountain, Inc.,* 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (''In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' (internal citations omitted)); *United States* v. *Republic Servs., Inc.,* 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting ''the deferential review to which the government's proposed remedy is accorded''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (''A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case.''). The ultimate question is whether ''the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *Microsoft,* 56 F.3d at 1461 (*quoting W. Elec. Co.,* 900 F.2d at 309).

Moreover, the Court's role under the 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 judgments proposed by the United States in antitrust enforcement, Public Law 108–237 § 221, and added the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). ''A court can make its public interest determination based on the competitive impact statement and response to public comments alone.'' *U.S. Airways,* 38 F. Supp. 3d at 76 (citing *Enova Corp.,* 107 F. Supp. 2d at 17).

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: April 17, 2023.

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA:

Micah D. Stein (D.C. Bar #177063), U.S. Department of Justice, Antitrust Division, Civil Conduct Task Force, 450 Fifth Street NW, Suite 8600, Washington, DC 20530, Tel: 202–705–2503, Fax: 202–616–2441, Email: *Micah.Stein@usdoj.gov.*

[FR Doc. 2023–08726 Filed 4–24–23; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree for Natural Resource Damages Under the Oil Pollution Act

On April 19, 2022, the Department of Justice lodged a proposed consent decree with the United States District Court for the Eastern District of Louisiana in the lawsuit entitled *United States* v. *LLOG Exploration Offshore, L.L.C.,* Civil Action No. 2:23–cv–01301–WBV–KWR.

The United States filed this lawsuit with respect to a crude oil spill that occurred at the Mississippi Canyon Block 209 subsea oil production system (''MC 209'') in the Gulf of Mexico beginning on or about October 11, 2017. The oil spilled from a fractured subsea wellhead jumper that connected the MC 209 Well to a subsea manifold. The incident lasted 32 hours and resulted in an estimated discharge of 16,000 barrels of oil (672,000 gallons) into the waters of the Gulf of Mexico.

The Complaint seeks the recovery of damages for injury to, destruction of, loss of, or loss of use of natural

resources, plus the unreimbursed costs of assessing such damages (collectively, ''NRD''), under Section 1002 of the Oil Pollution Act (''OPA''), 33 U.S.C. 2702–2762. Under the proposed consent decree, Defendant will pay the United States $3.1 million and, in return, receive a covenant not to sue under OPA for NRD relating to the MC 209 spill, subject to specified reservations and reopeners.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer *United States* v. *LLOG Exploration Offshore, L.L.C.,* D.J. Ref. No. 90–5–1–1–12640. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed 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 proposed 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 $5.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Thomas Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–08656 Filed 4–24–23; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Inflation Reduction Act Wage Rates and Wage Determinations

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Wage and Hour Division (WHD)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before May 25, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: On August 16, 2022, President Biden signed H.R. 5376 (Pub. L. 117–169), a budget reconciliation measure commonly referred to as the ''Inflation Reduction Act of 2022'' (IRA). The IRA allows taxpayers to claim enhanced tax credit and deduction amounts in situations in which Davis-Bacon Act (DBA) rates are not required but are voluntarily paid as a condition of claiming the enhanced amount. The purpose of this ICR is to collect the data from respondents outside the scope of DBA/DBRA who will need an applicable wage determination or wage rates for classifications that are not in an applicable wage determination to satisfy prevailing wage requirements and thereby take the enhanced tax credit and deduction amounts under the IRA. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 22, 2022 (87 FR 78712).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–WHD.

Title of Collection: Inflation Reduction Act Wage Rates and Wage Determinations.

OMB Control Number: 1235–0034.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 1,727.

Total Estimated Number of Responses: 1,727.

Total Estimated Annual Time Burden: 432 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D).)

Dated: April 19, 2023.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2023–08695 Filed 4–24–23; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2022–0011]

Maritime Advisory Committee on Occupational Safety and Health (MACOSH); Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of MACOSH meeting.

SUMMARY: The Maritime Advisory Committee on Occupational Safety and Health (MACOSH) will meet on May 23 and 24, 2023, in a hybrid format. Committee members will meet in person, while the public is invited to

participate either in person or virtually via WebEx.

DATES:

MACOSH Workgroup meetings: The MACOSH Shipyard and Longshoring Workgroups will meet from 9:30 a.m. to 4:00 p.m., ET, Tuesday, May 23, 2023.

MACOSH full Committee meeting: MACOSH will meet from 9:30 a.m. to 4:00 p.m., ET, Wednesday, May 24, 2023.

ADDRESSES:

Submission of comments and requests to speak: Comments and requests to speak at the MACOSH meeting on May 23, 2023, including attachments, must be submitted electronically at *www.regulations.gov,* the eRulemaking Portal by May 16, 2023. Comments must be identified by the docket number for this **Federal Register** notice (Docket No. OSHA–2022–0011). Follow the online instructions for submitting comments.

Registration: All persons wishing to attend the meeting in-person or virtually must register via the registration link on the MACOSH web page at *https://www.osha.gov/advisorycommittee/macosh.* Upon registration, in-person attendees will receive directions for participation and virtual attendees will receive a WebEx link for remote access to the meeting. At this time, OSHA will be limiting in-person attendance to 25 members of the public.

Requests for special accommodations: Submit requests for special accommodations, including translation services, for this MACOSH meeting by May 16, 2023, to Ms. Carla Marcellus, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone: (202) 693–1865; email: *marcellus.carla@dol.gov.*

Instructions: All submissions must include the agency name and the OSHA docket number for this **Federal Register** notice (Docket No. OSHA–2022–0011). OSHA will place comments, including personal information, in the public docket, which may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

Docket: To read or download documents in the public docket for this MACOSH meeting, go to *www.regulations.gov.* All documents in the public docket are listed in the index; however, some documents (*e.g.,* copyrighted material) are not publicly available to read or download through *www.regulations.gov.* All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general information about MACOSH: Ms. Amy Wangdahl, Director, Office of Maritime and Agriculture, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone: (202) 693–2066; email: *wangdahl.amy@dol.gov.*

Telecommunication requirements: For additional information about the telecommunication requirements for the meeting, please contact Ms. Carla Marcellus, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone: (202) 693–1865; email: *marcellus.carla@dol.gov.*

*For copies of this **Federal Register** Notice:* Electronic copies of this **Federal Register** notice are available at *www.regulations.gov.* This notice, as well as news releases and other relevant information, are also available at OSHA's web page at *www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Meeting Information

MACOSH Workgroup Meetings

The MACOSH Shipyard and Longshoring Workgroups will meet from 9:30 a.m. to 4:00 p.m., ET, Tuesday, May 23, 2023.

MACOSH Meeting

MACOSH will meet from 9:30 p.m. to 4:00 p.m., ET, Wednesday, May 24, 2023. Public attendance will be in a hybrid format, either in person or virtually via WebEx. Meeting information will be posted in the Docket (Docket No. OSHA–2022–0011) and on the MACOSH web page, *https://www.osha.gov/advisorycommittee/macosh,* prior to the meeting.

The tentative agenda for the full Committee meeting will include the introduction of new members, reports from the Shipyard and Longshoring workgroups, and updates from the Office of the Assistant Secretary, the Directorate of Cooperative and State Programs, the Office of Workers' Compensation Programs, and the Office of Maritime and Agriculture.

Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by 29 U.S.C. 655(b)(1) and 656(d), 5 U.S.C. 10, Secretary of Labor's Order No. 8–2020 (85 FR 58393), and 29 CFR part 1912.

Signed at Washington, DC, on April 18, 2023.

James S. Frederick,

Deputy Assistant Secretary for Occupational Safety and Health.

[FR Doc. 2023–08694 Filed 4–24–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Advisory Board on Toxic Substances and Worker Health

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Announcement of meeting of the Advisory Board on Toxic Substances and Worker Health (Advisory Board) for the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

SUMMARY: The Advisory Board will meet May 17–18, 2023, in Idaho Falls, Idaho, near the Idaho National Laboratory covered facility.

Submission of comments, requests to speak, materials for the record, and requests for special accommodations: You must submit comments, materials, requests to speak at the Advisory Board meeting, and requests for accommodations by May 10, 2023, identified by the Advisory Board name and the meeting date of May 17–18, 2023, by any of the following methods:

- *Electronically:* Send to: *EnergyAdvisoryBoard@dol.gov* (specify in the email subject line, for example ''Request to Speak: Advisory Board on Toxic Substances and Worker Health'').
- *Mail, express delivery, hand delivery, messenger, or courier service:* Submit one copy to the following address: U.S. Department of Labor, Office of Workers' Compensation Programs, Advisory Board on Toxic Substances and Worker Health, Room S–3522, 200 Constitution Ave. NW, Washington, DC 20210.

Instructions: Your submissions must include the Agency name (OWCP), the committee name (the Advisory Board), and the meeting date (May 17–18, 2023). Due to security-related procedures, receipt of submissions by regular mail may experience significant delays. For additional information about submissions, see the **SUPPLEMENTARY INFORMATION** section of this notice.

OWCP will make available publicly, without change, any comments, requests to speak, and speaker presentations,

including any personal information that you provide. Therefore, OWCP cautions interested parties against submitting personal information such as Social Security numbers and birthdates.

ADDRESSES: The Advisory Board will meet at the Holiday Inn and Suites Idaho Falls, 3005 S Frk Blvd., Idaho Falls, Idaho 83402. Telephone: 208–227–9800.

FOR FURTHER INFORMATION CONTACT: For press inquiries: Ms. Laura McGinnis, Office of Public Affairs, U.S. Department of Labor, Room S–1028, 200 Constitution Ave. NW, Washington, DC 20210; telephone (202) 693–4672; email *Mcginnis.Laura@DOL.GOV.*

SUPPLEMENTARY INFORMATION: The Advisory Board will meet: Tuesday, May 16, 2023, for a fact-finding site visit to the Idaho National Laboratory, accompanied by the Designated Federal Officer; Wednesday, May 17, 2023, from 9:00 a.m. to 5:00 p.m. Pacific time; and Thursday, May 18, 2023, from 8:30 a.m. to 11:00 a.m. Mountain Daylight time in Idaho Falls, Idaho. Some Advisory Board members may attend the meeting by teleconference. The teleconference number and other details for participating remotely will be posted on the Advisory Board's website, *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm,* 72 hours prior to the commencement of the first meeting date. Advisory Board meetings are open to the public.

Public comment session: Wednesday, May 17, from 4:15 p.m. to 5:00 p.m. Pacific time. Please note that the public comment session ends at the time indicated or following the last call for comments, whichever is earlier. Members of the public who wish to provide public comments should plan to either be at the meeting location or call in to the public comment session at the start time listed.

The Advisory Board is mandated by section 3687 of EEOICPA. The Secretary of Labor established the Board under this authority and Executive Order 13699 (June 26, 2015). The purpose of the Advisory Board is to advise the Secretary with respect to: (1) the Site Exposure Matrices (SEM) of the Department of Labor; (2) medical guidance for claims examiners for claims with the EEOICPA program, with respect to the weighing of the medical evidence of claimants; (3) evidentiary requirements for claims under part B of EEOICPA related to lung disease; (4) the work of industrial hygienists and staff physicians and consulting physicians of the Department of Labor and reports of such hygienists and physicians to ensure quality, objectivity, and consistency; (5) the claims adjudication process generally, including review of procedure manual changes prior to incorporation into the manual and claims for medical benefits; and (6) such other matters as the Secretary considers appropriate. The Advisory Board sunsets on December 19, 2024.

The Advisory Board operates in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2) and its implementing regulations (41 CFR part 102–3).

Agenda: The tentative agenda for the Advisory Board meeting includes:

- Review and follow-up on Advisory Board's previous recommendations, data requests, and action items;
- Discussion of resources requested;
- Review responses to Board questions;
- Working group presentations;
- Discussion of reviewed claims and planning for additional case review;
- Review of Board tasks, structure and work agenda;
- Consideration of any new issues; and
- Public comments.

OWCP transcribes and prepares detailed minutes of Advisory Board meetings. OWCP posts the transcripts and minutes on the Advisory Board web page, *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm,* along with written comments, speaker presentations, and other materials submitted to the Advisory Board or presented at Advisory Board meetings.

Public Participation, Submissions and Access to Public Record

Advisory Board meetings: All Advisory Board meetings are open to the public. Information on how to participate in the meeting remotely will be posted on the Advisory Board's website. Submission of comments: You may submit comments using one of the methods listed in the **SUMMARY** section. Your submission must include the Agency name (OWCP) and date for this Advisory Board meeting (May 17–18, 2023). OWCP will post your comments on the Advisory Board website and provide your submissions to Advisory Board members.

Because of security-related procedures, receipt of submissions by regular mail may experience significant delays.

Requests to speak and speaker presentations: If you want to address the Advisory Board at the meeting you must submit a request to speak, as well as any written or electronic presentation, by May 10, 2023, using one of the methods listed in the **SUMMARY** section. Your request may include:

- The amount of time requested to speak;
- The interest you represent (*e.g.,* business, organization, affiliation), if any; and
- A brief outline of the presentation.

PowerPoint presentations and other electronic materials must be compatible with PowerPoint 2010 and other Microsoft Office 2010 formats. The Advisory Board Chair may grant requests to address the Board as time and circumstances permit.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, are also available on the Advisory Board's web page at *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm.*

For further information regarding this meeting, you may contact Ryan Jansen, Designated Federal Officer, at *jansen.ryan@dol.gov,* or Carrie Rhoads, Alternate Designated Federal Officer, at *rhoads.carrie@dol.gov,* U.S. Department of Labor, 200 Constitution Avenue NW, Suite S–3524, Washington, DC 20210, telephone (202) 343–5580.

This is not a toll-free number.

Signed at Washington, DC, this 19th day of April, 2023.

Christopher Godfrey,

Director, Office of Workers' Compensation Programs.

[FR Doc. 2023–08693 Filed 4–24–23; 8:45 am]

BILLING CODE 4510–CR–P

MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Merit Systems Protection Board.

ACTION: 60-Day notice and request for comments.

SUMMARY: The U.S. Merit Systems Protection Board (MSPB or Board) is seeking approval of a new Information Collection Request (ICR) in accordance with the Paperwork Reduction Act (PRA). The ICR will be submitted to the Office of Management and Budget (OMB) for review and clearance. This information collection is part of MSPB's statutory mission to adjudicate appeals of certain Federal agency personnel and retirement actions and certain alleged violations of law. The information collection instruments consist of the Initial Appeal Form in different collection mediums: paper, PDF, and through MSPB's electronic filing

system, e-Appeal. Through this collection and approval process, MSPB is complying with normal clearance procedures. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to the OMB.

DATES: Consideration will be given to all comments received by June 26, 2023.

ADDRESSES: Submit comments by using only one of the following methods:

(1) *Email.* Submit comments to *privacy@mspb.gov.*

(2) *Mail.* Submit comments to D. Fon Muttamara, Chief Privacy Officer, Office of the Clerk of the Board, U.S. Merit Systems Protection Board, 1615 M Street NW, Washington, DC 20419.

(3) *Fax.* Submit comments to (202) 653–7130.

All comments must reference OMB Control No. 3124–0NEW, E-Appeal/U.S. Merit Systems Protection Board Appeal Form. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to MSPB's website (*www.mspb.gov*) and will include any personal information you provide. Therefore, submitting this information makes it public.

FOR FURTHER INFORMATION CONTACT: D. Fon Muttamara, Chief Privacy Officer, at *privacy@mspb.gov;* (202) 653–7200. You may submit written questions to the Office of the Clerk of the Board by any of the following methods: by email to *privacy@mspb.gov* or by mail to Clerk of the Board, U.S. Merit Systems Protection Board, 1615 M Street NW, Washington, DC 20419. Please reference OMB Control No. 3124–0NEW, E-Appeal/U.S. Merit Systems Protection Board Appeal Form, with your questions.

SUPPLEMENTARY INFORMATION: MSPB has a currently approved collection, OMB No. 3124–0009, E-Appeal/U.S. Merit Systems Protection Board Appeal Form, which will be discontinued once this collection has been approved. The Initial Appeal Form (Form 185) for this new collection is substantially similar to the currently approved Initial Appeal Form. Also following approval of this new collection, MSPB will deploy a new, modernized platform for its e-Appeal system that collects the information required to initiate an appeal. MSPB is requesting public comments on the new Initial Appeal Form.MSPB is authorized to adjudicate appeals of certain Federal agency personnel and retirement actions and certain alleged violations of law. *See* 5 U.S.C. 7701(a); 5 U.S.C. 1204. The Board has published its regulations for processing appeals at 5 CFR parts 1201, 1208, and 1209, which include the information required to be submitted to initiate a new appeal. Individuals must provide this information in writing and are not required to use a particular format.

The purpose of collecting the information is to ensure that individuals submit the required information to file an appeal, as set forth in MSPB's regulations. While no specific format is required, MSPB provides an appeal form, MSPB Form 185 (Initial Appeal Form), to assist individuals in the efficient and timely submission of the information.

As set forth in statute and regulation, MSPB is a quasi-judicial agency of limited jurisdiction. The Board's regulations require that appellants provide certain information when filing an appeal so that the Board can determine whether it has jurisdiction over the appeal and whether the appeal has been filed within the applicable time limit. Although an appeal may be filed in any format, including letter form, the Initial Appeal Form is designed to assist individuals in submitting the required information, and to ensure that individuals file appeals that meet the jurisdictional requirements of MSPB. The information required to file an appeal is set forth at 5 CFR 1201.24, 1208.13, 1208.23, and 1209.6. Once obtained, this information allows MSPB to docket the appeal for assignment to an administrative judge to adjudicate the appeal. If this information is not collected, the process of determining whether MSPB has jurisdiction over any given appeal and any subsequent adjudication will be less efficient and more time consuming.

While this is a new information collection, MSPB has a currently approved information collection, OMB No. 3124–0009, which collects the same information. MSPB has used the information collected through OMB No. 3124–0009 to determine whether MSPB has jurisdiction over any given appeal, and to docket those appeals for adjudication. MSPB is submitting this information collection as a new collection—instead of a renewal of the existing collection—to make an administrative change to the type of collection in accordance with the PRA. This change is unrelated to the overall purpose and use of the information collection. Following OMB approval of this new collection, the existing collection, OMB No. 3124–0009, will be discontinued.

Appeal Form 185

The Initial Appeal Form (Form 185) for this new collection is substantially similar to the currently-approved Initial Appeal Form with the following updates. The instructions at the beginning of the PDF version of the Initial Appeal Form have been updated to address changes in laws or regulations. In addition, the Privacy Act Statement and Public Reporting Burden notice have been updated and moved to the second page of the Initial Appeal Form. The list of agency personnel actions in Part 2 of the Initial Appeal Form has been updated to address changes in laws. Other non-substantive formatting issues have been made throughout the Initial Appeal Form.

Title: Information Collection Submission for ''E-Appeal/U.S. Merit Systems Protection Board Appeal Form.''

OMB Number: 3124–0NEW.

Type of Information Collection: This will be a new information collection.

ICR Status: MSPB intends to request approval of a new information collection from OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 and 3507). 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.

Abstract of Proposed Collection: This information collection is necessary to ensure that individuals submit the required information to file an appeal, as set forth in MSPB's regulations, including information about the appellant and the personnel action or decision that is being appealed.

Affected Public: Individuals and Households.

Estimated Total Number of Respondents: 5,000.

Estimated Frequency of Responses: Once per year.

Estimated Total Average Number of Responses for Each Respondent: 1.

Estimated Total Annual Burden Hours: 7,500.

Estimated Total Cost: $294,075.

Comments: Comments should be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to: (a) evaluate whether the collection of information is necessary for the proper performance of the functions of MSPB, including whether the information shall have practical utility; (b) evaluate the accuracy of MSPB's estimate of the

burden of the collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; (d) minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) evaluate the estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Jennifer Everling,

Acting Clerk of the Board.

[FR Doc. 2023–08650 Filed 4–24–23; 8:45 am]

BILLING CODE 7400–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (23–035)]

Heliophysics Advisory Committee; Space Weather Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Space Weather Council (SWC). The SWC is a subcommittee of the Heliophysics Advisory Committee (HPAC), which functions in an advisory capacity to the Director, Heliophysics Division, in the NASA Science Mission Directorate. The meeting will be held for the purpose of soliciting, from the science community and other persons, scientific and technical information relevant to program planning.

DATES: Wednesday, May 10, 2023, 9:00 a.m. to 5:00 p.m.; and Thursday, May 11, 2023, 9:00 a.m. to 5:00 p.m., Eastern Time.

ADDRESSES: Meeting will be virtual. See dial-in information below under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mrs. Karshelia Kinard, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2355 or *karshelia.kinard@nasa.gov*.

SUPPLEMENTARY INFORMATION: This meeting will be available by Webex or telephonically. Any interested person may join via Webex at *https://nasaenterprise.webex.com,* the meeting number is 2760 118 1129, and the password is 6RUjyzgM?56 (case sensitive), both days. To join by telephone call, use US Toll +1–415–527–5035 (access code: 2760 679 3993), both days, to participate in this meeting by telephone.

The agenda for the meeting includes the following topics:

- Discussion of SWC future advisory topics and activities such as:
  - Coordination of Space Weather Council with other Space Weather Groups
  - Space Weather Science and Modeling Gap Analysis
  - Space Weather and Deep Space Exploration
  - Interagency and International Collaboration in Space Weather Science

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2023–08725 Filed 4–24–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

[NCUA–2023–0045]

RIN 3133–AF52

Climate-Related Financial Risk

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for information and comment.

SUMMARY: The NCUA is seeking public input on current and future climate and natural disaster risks to federally insured credit unions (FICUs), related entities, their members, and the National Credit Union Share Insurance Fund (SIF). The NCUA also seeks input of any interested parties on the development of potential future guidance, regulation, reporting requirements, and/or supervisory approaches for FICUs' management of climate-related financial risks.

DATES: For consideration, comments must be received on or before June 26, 2023.

ADDRESSES: You may submit comments by any one of the following methods. Please send comments by one method only.

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for NCUA Docket [2023–XXXX].
- *Fax:* (703) 518–6319. Include ''[Your name] Comments on ''Request for Information and Comment on Climate-Related Financial Risk.''
- *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mailing address.

Public Inspection: You may view all public comments on the Federal eRulemaking Portal at *https://www.regulations.gov* as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. If you are unable to access public comments on the internet, you may contact the NCUA for alternative access by calling (703) 518–6540 or emailing *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT:

Policy and Analysis: Rachel Cononi, Deputy Chief Economist (703) 303–2437 and Lisa Roberson, Deputy Director, Office of Consumer Financial Protection (703) 548–2466.

Legal: Marvin Shaw, Senior Staff Attorney, (703) 518–6540; or by mail at National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION:

NCUA Overview

The NCUA is an independent federal agency that insures shares at FICUs [1] and charters and regulates federal credit unions (FCUs). The NCUA is charged with protecting the safety and soundness of FICUs and, in turn, the SIF through regulation and supervision. The NCUA also works to protect credit union members and consumers.

The NCUA's mission is to ''protect the system of cooperative credit and its member-owners through effective chartering, supervision, regulation, and insurance.'' [2] Consistent with these aims, the NCUA has statutory

[1] Throughout this Request for Information, the term FICUs and ''credit union'' is used interchangeably.

[2] NCUA Mission and Values web page.

responsibility for a wide variety of regulations that protect the credit union system, members, and the SIF.

Climate Risk and Its Relevance in the Financial Sector

Climate change is accelerating and the number—and cost—of climate-related natural disasters is rising. The economic effects of these events are clear. Each year, natural disasters like hurricanes, wildfires, droughts, and floods impose a substantial financial toll on households and businesses alike. The physical effects of climate change along with associated transition costs pose significant risks to the U.S. economy and the U.S. financial system.

In 2021, the United States experienced 20 separate billion-dollar weather and climate disaster events, which caused an estimated $153 billion in damage. Overall, 2021 was the third most costly year on record for these types of events and it was the seventh consecutive year in which 10 or more billion-dollar weather and climate disaster events have occurred in the United States. In 2022, there were an estimated 15 billion-dollar disaster events making it the eighth straight year with 10 or more billion-dollar disaster events. Together, these events caused an estimated $165 billion in damage.[3]

Climate-related financial risks can be grouped into two broad categories—physical risk and transition risk.[4] Physical risk refers to harm to people and property caused by discrete, climate-related events like hurricanes, wildfires, and heatwaves, as well as longer-term, chronic phenomena, including changes in precipitation patterns, sea level rise, and higher average temperatures. Transition risk refers to stress on institutions or sectors caused by measures taken to move towards a less carbon-intensive economy. This includes responding to public policy changes, adopting new technologies, and adapting to shifts in consumer and investor preferences, which may lead to higher costs and substantial shifts in asset values. If these changes occur in a disorderly fashion, the effect on individuals, businesses, communities, and financial institutions could be sudden and disruptive.

Economic and financial disruptions and uncertainties arising from both the physical and transition risks could affect the credit union industry across many dimensions. Climate-related physical and transition risks tend to manifest as traditional financial risks, including credit risk, liquidity risk, market risk, and operational risk. For example, disruptions in economic activity caused by climate-related weather events like flooding or wildfires may affect household income and the ability to stay current on household financial obligations. The property damage associated with such events could affect the value of homes and the mortgages collateralized by residential real estate. These events pose similar risks to businesses and mortgages collateralized by commercial real estate.

The policy and technological changes needed to reduce the environmental impact of human activities and move towards a less carbon-intensive economy may also have a wide range of effects on the economy, businesses, consumers, and thus credit unions. For instance, the collateral value of motor vehicles may be affected as consumer preferences shift from gasoline-powered vehicles to electric and hybrid vehicles. Efforts to reduce greenhouse gas emissions could lead to significant adjustments in sectors of the economy that are greenhouse gas-intensive, including the energy, transportation, manufacturing, and agricultural sectors. Such adjustments may create new business opportunities, such as the creation of biodiesel products. Households, businesses, and credit unions with direct or indirect ties to these sectors would also be affected. Thus, any weaknesses in how a credit union identifies, measure, monitors, and mitigates physical and transition risks could adversely affect a credit union's safety and soundness.

Credit unions need to consider climate-related financial risks, and how they could affect their membership and institutional performance. For instance, a credit union's field of membership is often tied to a particular industry or community. To remain resilient and retain the ability to offer their members access to safe, fair, and affordable financial services, credit unions may need to consider adjustments to their fields of membership as well as the types of loan products they offer.

Low-income and minority communities are particularly vulnerable to climate-related financial risk. Climate-related disasters can cause property damage and can also lead to job losses and undermine economic output, reducing already limited household income and wealth and diminishing access to capital. Additionally, absent any mitigating actions, changes in government policy, programs, or guidelines to transition to a less carbon-intensive economy may unintentionally increase the cost of homeownership in vulnerable communities. Financially vulnerable households and communities are the least able to absorb the costs associated with climate-related disasters, so these consumers may have more difficulty adapting to changes in government policies and the natural environment. Thus, climate-related financial risks may be amplified for FICUs serving these communities.

Climate change presents several complex conceptual and practical challenges not only for credit unions, but also for the NCUA. Just as credit unions must continue to adapt to account for climate-related financial risks, the NCUA will need to evolve its understanding of the impact on credit unions, credit union members, the credit union system, and the SIF. The information collected from the responses to the questions below will assist the agency in developing tools to identify and assess current and future risks to FICUs and the SIF. Stakeholder feedback will also inform the agency's future decisions on the best way to address these risks. And, the responses of interested parties will allow the agency to better understand how credit union members may be affected by these risks.

Request for Comment

The Board seeks comments on the current and future climate and natural disaster risks faced by FICUs. The NCUA is broadly interested in understanding stakeholders' views and experiences in this area. Commenters are also encouraged to discuss any and all relevant issues they believe the Board should consider with respect to the financial risks associated with climate change. This includes, but is not limited to, risks posed to, or stemming from, field of membership, lending, investments, other assets, deposits, underwriting standards, insurance coverage, liquidity, and capital.

The Board's request for information should not imply any intention to modify any existing requirements applicable to FICUs and does not grant FICUs any new authorities or limit any existing authorities. The request for information does not speak to the permissibility or impermissibility of any specific activity. Additionally, any

[3] NOAA National Centers for Environmental Information (NCEI) U.S. Billion-Dollar Weather and Climate Disasters (2023). *https://www.ncei.noaa.gov/access/billions/,* DOI: 10.25921/stkw–7w73.

[4] See, *e.g.,* Basel Committee on Banking Supervision, Climate-related Risk Drivers and Their Transmission Channels (April 2021); Financial Stability Board, The Implications of Climate Change for Financial Stability (November 23, 2020); and Market Risk Advisory Committee of the Commodity Futures Trading Commission, Managing Climate Risk in the U.S. Financial System (September 9, 2020).

information provided by credit unions as part of this RFI will not be used in the examination and supervision of individual credit unions. Any new requirements for credit unions associated with climate-related financial risk would require changes to examination and supervision procedures and Board action and approval before implementing.

Moreover, as a prudential financial regulator, the NCUA does not have expertise in climate science. As set forth in the questions below, the NCUA is seeking input that would strengthen its ability to identify and assess credit unions' current and future climate and natural disaster risk. The NCUA is also seeking input on opportunities to enhance the agency's supervision and regulation of each regulated entity's management of such risks.

Physical Risk

1. Climate-related events, including floods, sea level rise, hurricanes, winds, wildfires, and drought, may affect credit union operations (for example, office buildings, supply chain); commercial and residential real estate; agricultural, commercial, and industrial lending; and small business lending. What climate-related physical risks, if any, are affecting the industry? How might physical risks and the impact of these risks on credit unions and their members change over time?

2. What risk management strategies could institutions implement to prepare for or minimize the effects of physical risk? Is there anything regulators should do to help institutions address physical risks?

3. What impact are physical risks expected to have on credit union members, particularly financially vulnerable populations, including lower-income communities, communities of color, Native American, and other under-resourced communities? What steps could credit unions take to mitigate physical risks to ensure continued lending to these populations?

Transition Risk

4. Transition risks from climate change can come from government policy changes, including changes to zoning laws; other federal, state and local laws and regulations; technological changes; and consumer and market demand. What climate-related transition risks are affecting or could affect credit unions in the various areas of business activities, including, but not limited to, operations, real estate lending, commercial lending, and small business lending?

5. What risk management strategies could credit unions implement to prepare for or minimize the effects of transition risk? Is there anything regulators can do to help credit unions address transition risk?

6. What effects are transition risks expected to have on credit union members, particularly financially vulnerable populations, including lower-income communities, communities of color, Native American, and other under-resourced communities? What steps could credit unions take to mitigate transition risks to ensure continued lending to these populations?

Operations

7. What adjustments should credit unions make to their operations (including relationships with supply chain and third parties, new product and service offerings, among others) in response to climate-related financial risks?

Governance

8. What role should a credit union's board of directors have in the oversight and analysis of financial risks due to climate change?

9. How can credit unions incorporate climate-related financial risks into their overall risk management and governance framework?

10. Do credit unions have board members, committees, or senior management functions that are responsible for climate-related financial risks? If yes, please provide examples.

11. What are the top barriers/challenges for credit unions in designating board members, committees, and/or senior management functions to be responsible for climate-related financial risks?

12. Do credit union boards and senior management have, or are they aware of and have an understanding of, the tools and resources necessary to evaluate and address climate-related financial risk? What, if any, are other barriers for addressing climate-related financial risks?

Business Strategies

13. How should credit unions consider climate-related financial risks in developing business strategies? How do these risks impact product and service offerings?

14. In what ways may credit unions need to incorporate climate-related financial risks into business strategies and product and service offerings?

15. If you are a credit union, has your board and management assessed the impact of climate change on the credit union's products and services? If yes, please briefly describe how you have assessed the impact of climate change on your credit union's products and services.

16. What barriers or challenges do credit unions face in considering climate change in business strategies and product offerings? Does your board or senior management believe climate change is a material risk to the credit union's business?

17. Do credit unions have sufficient expertise or are they aware of and have an understanding of the tools and resources necessary to address the financial risks and opportunities associated with climate change and their impact on credit union performance? Do you think considering climate-related financial risks may put credit unions at a competitive disadvantage?

18. Do credit unions take steps to assess, reduce, or mitigate its climate impact? If you are a credit union answering this question, please describe what your credit union has done. If your credit union has not taken such steps, do you plan to do so and what is your time frame? If your credit union does not plan to take such steps, please briefly describe the reason(s) for not doing so. What barriers exist that prevent your credit union from taking such steps?

Risk Management

19. What methods can credit unions use to identify, measure, monitor, manage, and report on their exposure to climate-related financial risks? Please provide a brief description of the risk management process credit unions should take. If you are a credit union, please provide a link to your climate policy. If you are a credit union and do not have a risk management process, do you plan to develop a process? What is the anticipated time frame for developing such a process? If you do not plan to develop such a process, please explain your rationale for this decision.

20. Credit unions typically evaluate credit risk, interest rate risk, liquidity risk, transaction risk, strategic risk, reputation risk, and compliance risk. How do climate-related financial risks impact these traditional risk areas? To what extent should a credit union consider climate change in analyzing these and other existing risk factors?

21. What risk mitigation strategies can credit unions use to transfer some or all of the financial risks associated with climate change? Are these mitigation tools cost effective?

22. When credit unions consider climate change in analyzing existing

risk factors, should they include the risk of adverse effects of climate change on financially vulnerable populations, including lower-income communities, communities of color, Native American, and other disadvantaged or under-resourced communities? If you are a credit union, are you considering climate-related financial risks specific to financially-vulnerable populations?

23. If your credit union does not currently consider climate change in analyzing its existing risk factors, do you anticipate doing so? How long will it take to do so? If you do not plan to do so, please briefly describe your reasons or barriers.

24. What are the top barriers for credit unions to consider (or that credit unions have encountered) in creating a risk management process for climate-related financial risks and/or including climate change in its analysis of existing risk factors? Does your board or senior management not consider climate change as posing a material risk to your credit union's business?

25. What types of data or products are necessary to assist credit unions in evaluating exposure to climate-related financial risks?

26. Do credit unions have sufficient understanding of the climate-related risk management process? Do credit unions have sufficient understanding of how climate change affects existing risk factors? Please specify any other barriers credit unions face in assessing climate-related risk.

27. If your credit union is involved in the mortgage business, what tools does your credit union use to manage flood risk? What additional tools would be helpful to your credit union?

Reporting and Targets

28. What internal reporting systems are you aware of that would assist credit unions in evaluating climate-related financial risks? Please provide a brief description of these internal reporting systems. If provided by third parties, what are the costs of these reporting systems?

Climate-Related Opportunities

29. Climate change and efforts to address climate change may also present new opportunities for credit unions. What products and services do credit unions offer in response to physical and transition risk (for example renewable energy loan products and services, such as loans for solar power generation or biodiesel development)? What are the top drivers for offering these products and services?

30. Are you aware of credit unions or does your credit union finance clean energy projects such as residential or commercial energy efficiency upgrades and solar installations? Is this financing of clean energy products just one of many services provided by the credit union or part of an overall business strategy? If you provide clean energy products, please provide the estimated size of your clean energy portfolio and what percent it represents of your overall lending. If no, please briefly describe any challenges for credit unions to offering this type of lending. Please also discuss the barriers to underwriting clean energy loans within under-resourced communities.

31. Each type of lending involves various areas of expertise such as underwriting, guidance for loan loss reserves, and/or technical assistance such as how to lend or acquire interest in climate-related and environmentally conscious loan products. What kind of support do credit unions need to expand products and services? Please describe any barriers to entry as well as the types of information or resources needed to facilitate a credit union's ability to offer climate-related and environmentally conscious loan products.

32. Are there any climate-related opportunities, in addition to renewable energy, that credit unions should consider?

33. What regulatory changes would be necessary to encourage credit unions to develop products and services designed to capitalize on opportunities presented by the transition to clean energy and a less carbon intensive economy?

Suggestions for NCUA

34. The NCUA understands that managing the financial risks of climate change is an evolving field and new to some credit unions. The NCUA is exploring several options to support credit unions in these efforts, including sharing industry best practices, providing guidance on how to manage the potential financial risks from climate change, convening workshops with the industry to discuss climate-related financial risk topics, and hosting educational seminars on how climate change may impact the financial system and individual credit unions. What efforts would be the most beneficial to credit unions?

35. Should the NCUA modify its examination procedures and supervisory posture in relation to climate-related financial risk? This would be including, but not limited to, Flood Disaster Protection Act, Disaster Preparedness reviews, CAMELS ratings, and assessments of the level and direction of the various areas of risk.

Data Gathering

36. How can the NCUA support efforts to develop standards of classification and data reporting on climate-related financial risks?

37. What data could the NCUA collect to improve credit unions' understanding of climate-related financial risks and support credit union efforts to manage these risks?

Questions for NCUA

38. Please provide any questions or comments not covered in this request for information that you would like the NCUA to address regarding to climate-related financial risk.

Authority: 12 U.S.C. 1756 and 1784.

By the NCUA Board on April 20, 2023.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2023–08715 Filed 4–24–23; 8:45 am]

BILLING CODE 7535–01–P

POSTAL SERVICE

International Product Change—Priority Mail Express International, Priority Mail International & First-Class Package International Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a Priority Mail Express International, Priority Mail International & First-Class Package International Service contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: Date of notice: April 25, 2023.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on April 19, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 19 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–136 and CP2023–138.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2023–08674 Filed 4–24–23; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97327; File No. SR–MIAX–2023–17]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Increase Fees for the ToM Market Data Product and Establish Fees for the cToM Market Data Product

April 19, 2023.

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 April 11, 2023, Miami International Securities Exchange, LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Fee Schedule (''Fee Schedule'') to amend the fees for two market data products by (i) amending the fees for MIAX Top of Market (''ToM''); and (ii) establishing fees for MIAX Complex Top of Market (''cToM'').

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fees for two market data products by (i) amending the fees for ToM; and (ii) establishing fees for cToM. The proposed fees will be immediately effective. The Exchange initially filed the proposal on December 28, 2022 (SR–MIAX–2022–49) (the ''Initial Proposal'').[3] On February 23, 2023, the Exchange withdrew the Initial Proposal and replaced it with a revised proposal (SR–MIAX–2023–07) (the ''Second Proposal'').[4] The Exchange recently withdrew the Second Proposal and replaced it with this current proposal (SR–MIAX–2023–17).

The Exchange previously filed several proposals to adopt fees for cToM.[5] The Exchange notes that these prior proposals included an analysis of the costs underlying the compilation and dissemination of the proposed cToM fees. The Exchange previously included a cost analysis in the Initial Proposal. As described more fully below, the Exchange provides an updated cost analysis that includes, among other things, additional descriptions of how the Exchange allocated costs among it and its affiliated exchanges (MIAX PEARL, LLC (''MIAX Pearl''), separately among MIAX Pearl Options and MIAX Pearl Equities, and MIAX Emerald, LLC (''MIAX Emerald,'' together with MIAX Pearl, the ''affiliated markets'')) to ensure no cost was allocated more than once, as well as additional detail supporting its cost allocation processes and explanations as to why a cost allocation in this proposal may differ from the same cost allocation in a similar proposal submitted by one of its affiliated markets. Although the baseline cost analysis used to justify the proposed fees was made in the Initial Proposal, the fees themselves have not changed since the Initial Proposal and the Exchange still proposes fees that are intended to cover the Exchange's cost of providing ToM and cToM, with a reasonable mark-up over those costs. The proposed fees are intended to cover the Exchange's cost of compiling and disseminating ToM and cToM with a reasonable mark-up over those costs, accounting for ongoing increases in expenses.[6] Before setting forth the additional details regarding the proposal as well as the updated Cost Analysis conducted by the Exchange, immediately below is a description of the proposed fees.

Proposed Market Data Pricing

The Exchange offers ToM and cToM to subscribers. The Exchange notes that there is no requirement that any Member[7] or market participant subscribe to ToM or cToM or any other data feed offered by the Exchange. Instead, a Member may choose to maintain subscriptions to ToM or cToM based on their business model. The proposed fees will not apply differently based upon the size or type of firm, but rather based upon the subscriptions a firm has to ToM or cToM and their use thereof, which are based upon factors deemed relevant by each firm. The proposed pricing for ToM and cToM is set forth below.

ToM

ToM is an Exchange-only market data feed that contains top of book quotations based on options orders[8] and quotes[9] entered into the System[10] and resting on the Exchange's Simple Order

[3] *See* Securities Exchange Act Release No. 96626 (January 10, 2023), 88 FR 2699 (January 17, 2023) (SR–MIAX–2022–49).

[4] *See* Securities Exchange Act Release No. 97080 (March 8, 2023), 88 FR 15803 (March 14, 2023) (SR–MIAX–2023–07).

[5] *See* Securities Exchange Act Release Nos. 92359 (July 9, 2021), 86 FR 37393 (July 15, 2021) (SR–MIAX–2021–28); SR–MIAX–2021–44 (withdrawn without being noticed by the Commission); 93426 (October 26, 2021), 86 FR 60314 (November 1, 2021) (SR–MIAX–2021–50); 93808 (December 17, 2021), 86 FR 73011 (December 23, 2021) (SR–MIAX–2021–62); 94262 (February 15, 2022), 87 FR 9733 (February 22, 2022) (SR–MIAX–2022–10); 94716 (April 14, 2022), 87 FR 23616 (April 20, 2022); 94893 (May 11, 2022), 87 FR 29914 (May 17, 2022) (SR–MIAX–2022–19).

[6] For example, the New York Stock Exchange, Inc.'s (''NYSE'') Secure Financial Transaction Infrastructure (''SFTI'') network, which contributes to the Exchange's connectivity cost, increased its fees by approximately 9% since 2021. Similarly, since 2021, the Exchange, and its affiliates, experienced an increase in data center costs of approximately 17% and an increase in hardware and software costs of approximately 19%. These percentages are based on the Exchange's actual 2021 and proposed 2023 budgets.

[7] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[8] The term ''order'' means a firm commitment to buy or sell option contracts. *See* Exchange Rule 100.

[9] The term ''quote'' or ''quotation'' means a bid or offer entered by a Market Maker that is firm and may update the Market Maker's previous quote, if any. The Rules of the Exchange provide for the use of different types of quotes, including Standard quotes and eQuotes, as more fully described in Rule 517. A Market Maker may, at times, choose to have multiple types of quotes active in an individual option. *See* Exchange Rule 100.

[10] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

Book[11] as well as administrative messages.[12] The Exchange currently charges Internal Distributors[13] $1,250 per month and External Distributors $1,750 per month for ToM. The Exchange does not currently charge, nor does it now propose to charge any additional fees based on a subscriber's use of the ToM and cToM data feeds, *e.g.,* displayed versus non-displayed use, redistribution fees, or any individual per user fees. As discussed more fully below, the Exchange recently calculated its annual aggregate costs for producing ToM to subscribers to be $371,817, or approximately $30,985 per month (rounded to the nearest dollar when dividing the annual cost by 12 months). The Exchange proposes to amend Section (6)(a) of the Fee Schedule to now charge Internal Distributors $2,000 per month and External Distributors $3,000 per month for ToM in an effort to cover the Exchange's increasing costs with compiling and producing ToM to market participants as evidenced by the Exchange's Cost Analysis detailed below.

cToM

The Exchange previously adopted rules governing the trading of Complex Orders[14] on the System in 2016.[15] At that time, the Exchange also adopted cToM and expressly waived fees for cToM to incentivize market participants to subscribe.[16] cToM was provided free of charge for six years and the Exchange absorbed all costs associated with compiling and disseminating cToM during that entire time. As discussed more fully below, the Exchange recently calculated its annual aggregate costs for producing cToM to subscribers to be $278,863, or approximately $23,239 per month (rounded to the nearest dollar when dividing the annual cost by 12 months). The Exchange now proposes to amend Section (6)(a) of the Fee Schedule to establish fees for cToM in order to recoup its ongoing costs going forward.

In summary, cToM provides subscribers with the same information as ToM as it relates to the Strategy Book,[17] *i.e.,* the Exchange's best bid and offer for a complex strategy, with aggregate size, based on displayable orders in the complex strategy on the Exchange. However, cToM provides subscribers with the following additional information that is not included in ToM: (i) the identification of the complex strategies currently trading on the Exchange; (ii) complex strategy last sale information; and (iii) the status of securities underlying the complex strategy (*e.g.,* halted, open, or resumed). cToM is therefore a distinct market data product from ToM in that it includes additional information that is not available to subscribers that receive only ToM. ToM subscribers are not required to subscribe to cToM, and cToM subscribers are not required to subscribe to ToM.

cToM Proposed Fees

The Exchange proposes to amend Section (6)(a) of the Fee Schedule to charge Internal Distributors $2,000 per month and External Distributors $3,000 per month for the cToM data feed. The proposed fees are identical to the fees that the Exchange proposes to charge for ToM. The Exchange does not propose to adopt redistribution fees for the cToM data feed. However, the recipient of cToM data would be required to become a data subscriber and would be subject to the applicable data subscriber fees. The Exchange also does not propose to charge any additional fees based on a subscriber's use of the cToM data feed, *e.g.,* displayed versus non-displayed use, and does not propose to impose any individual per user fees.

As it does today for ToM, the Exchange proposes to assess cToM fees to Internal and External Distributors in each month the Distributor is credentialed to use cToM in the production environment. Also, as the Exchange does today for ToM, market data fees for cToM will be reduced for new Distributors for the first month during which they subscribe to cToM, based on the number of trading days that have been held during the month prior to the date on which that subscriber has been credentialed to use cToM in the production environment. New cToM Distributors will be assessed a pro-rata percentage of the fees listed in the table in Section (6)(a) of the Fee Schedule, which is the percentage of the number of trading days remaining in the affected calendar month as of the date on which they have been credentialed to use cToM in the production environment, divided by the total number of trading days in the affected calendar month.

The Exchange also proposes to amend the paragraph below the table of fees for ToM and cToM in Section (6)(a) of the Fee Schedule to make a minor, non-substantive correction by deleting the phrase ''(as applicable)'' in the first sentence following the table of fees for ToM and cToM. The purpose of this proposed change is to remove unnecessary text from the Fee Schedule.

cToM Content Is Available From Alternative Sources

cToM is not the exclusive source for Complex Order information from the Exchange. It is a business decision of market participants whether to subscribe to cToM or not. Market participants that choose not to subscribe to cToM can derive much, if not all, of the same information from other Exchange sources, including, for example, the MIAX Order Feed (''MOR'').[18] The following cToM information is included in MOR: the Exchange's best bid and offer for a complex strategy, with aggregate size, based on displayable orders in the complex strategy on the Exchange; the identification of the complex strategies currently trading on the Exchange; and the status of securities underlying the complex strategy (*e.g.,* halted, open, or resumed). In addition to MOR, complex strategy last sale information can be derived from ToM. Specifically, market participants may deduce that last sale information for multiple trades in related options series with the same timestamps disseminated via ToM are likely part of a Complex Order transaction and last sale.

Additional Discussion—cToM Background

In the six years since the Exchange adopted Complex Order functionality, the Exchange has grown its monthly

[11] The term ''Simple Order Book'' means ''the Exchange's regular electronic book of orders and quotes.'' *See* Exchange Rule 518(a)(15).

[12] *See* Fee Schedule, Section (6)(a).

[13] A ''Distributor'' of MIAX data is any entity that receives a feed or file of data either directly from MIAX or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All Distributors are required to execute a MIAX Distributor Agreement. *See* Fee Schedule, Section (6)(a).

[14] *See* Exchange Rule 518(a)(5) for the definition of Complex Orders.

[15] *See* Securities Exchange Act Release No. 79072 (October 7, 2016), 81 FR 71131 (October 14, 2016) (SR–MIAX–2016–26) (Order Approving a Proposed Rule Change to Adopt New Rules to Govern the Trading of Complex Orders).

[16] *See* Securities Exchange Act Release No. 79146 (October 24, 2016), 81 FR 75171 (October 28, 2016) (SR–MIAX–2016–36) (providing a complete description of the cToM data feed).

[17] The ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

[18] *See* MIAX website, Market Data & Offerings, *available at https://www.miaxoptions.com/market-data-offerings* (last visited April 11, 2023). In general, MOR provides real-time ultra-low latency updates on the following information: new Simple Orders added to the MIAX Order Book; updates to Simple Orders resting on the MIAX Order Book; new Complex Orders added to the Strategy Book (*i.e.,* the book of Complex Orders); updates to Complex Orders resting on the Strategy Book; MIAX listed series updates; MIAX Complex Strategy definitions; the state of the MIAX System; and MIAX's underlying trading state.

complex market share from 0% to 10.86% of the total electronic complex non-index volume executed on exchanges offering electronic complex functionality for the month of November 2022.[19] During that same period, the Exchange has had a steady increase in the number of cToM subscribers. Until the Exchange initially filed to adopt cToM fees in July of 2021, the Exchange did not charge fees for cToM data provided by the Exchange.

The objective of this approach was to eliminate any fee-based barriers for Members when the Exchange launched Complex Order functionality in 2016, which the Exchange believes has been helpful in its ability to attract order flow as a relatively new exchange. As discussed more fully below, the Exchange recently calculated its annual aggregate costs for providing cToM at approximately $278,863. In order to establish fees that are designed to recover the aggregate costs of providing cToM plus a reasonable mark-up, the Exchange is proposing to modify its Fee Schedule, as described above. In addition to the Cost Analysis, described below, the Exchange believes that its proposed approach to market data fees is reasonable based on a comparison to competitors.

Additional Discussion—Comparison With Other Exchanges

ToM

The proposed fees for ToM are comparable to the fees currently in place for the options exchanges, particularly Nasdaq ISE, LLC (''ISE'').[20] In November 2022, the Exchange had 6.10% market share of equity options volume; for that same month, ISE had 6.19% market share of equity options volume.[21] The Exchange's proposed fees for ToM are equal to, and for Internal Distributors, lower than, the rates data recipients pay for comparable data feeds from ISE. The Exchange notes that other competitors maintain fees applicable to market data that are considerably higher than those proposed by the Exchange, including NYSE Arca, Inc. (''NYSE Arca'').[22] However, the Exchange has focused its comparison on ISE because it is the closest market in terms of market share and offers market data at prices lower than several other incumbent exchanges. The fees for the Nasdaq ISE Top Quote Feed, which like ToM, includes top of book, trades, and security status messages, consists of an internal distributor access fee of $3,000 per month (50% higher than the Exchange's proposed rate), and an external distributor access fee of $3,000 per month (equal to the Exchange's proposed rate).[23] ISE's overall charge to receive the Nasdaq ISE Top Quote Feed may be even higher than the Exchange's proposed rates because ISE charges additional per controlled device fees that can cause the distribution fee to reach up to $5,000 per month.[24] The Exchange's proposed rates do not include additional fees.

cToM

The proposed fees for cToM are comparable to the fees currently in place for competing options exchanges, particularly NYSE American, LLC (''NYSE American'').[25] As noted above, for the month of November 2022, the Exchange had 6.10% of the total equity options market share and 10.86% of the total electronic complex non-index volume executed on exchanges offering electronic complex functionality. For that same month, NYSE American had 6.93% of the total equity options market share and 6.35% of the total electronic complex non-index volume.[26] The Exchange proposes fees for cToM that are comparable to the rates data recipients pay for comparable data feeds from NYSE American. The Exchange has focused its comparison on NYSE American because it is the closest market in terms of market share. The fees for the NYSE American Options Complex, which, like cToM, includes top of book, trades, and security status messages for complex orders, consists of an internal distributor access fee of $1,500 per month (slightly lower than the Exchange's proposed rate), and an external distributor access fee of $1,000 per month (resulting in a total external distribution fee of $2,500 per month).[27] However, NYSE American's overall charge to receive NYSE American Options Complex data may be even higher than the Exchange's proposed rates because NYSE American charges additional non-displayed usage fees (each are $1,000 per month and a subscriber may pay multiple non-displayed usage fees), per user fees ($20 per month for professional users and $1.00 per month for non-professional users), and multiple data feed fees ($200 per month), all of which the Exchange does not propose to charge. These additional charges by NYSE American can cause the total cost to receive NYSE American Complex data to far exceed the rates that the Exchange proposes to charge.

Additional Discussion—Cost Analysis

In general, the Exchange believes that exchanges, in setting fees of all types, should meet high standards of transparency to demonstrate why each new fee or fee increase meets the Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. In particular, the Exchange believes that each exchange should take extra care to be able to demonstrate that these fees are based on its costs and reasonable business needs.

Accordingly, in proposing to charge fees for market data, the Exchange is especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and in carefully and transparently assessing the impact on Members—both generally and in relation to other Members—to ensure the fees will not create a financial burden on any participant and will not have an undue impact in particular on smaller Members and competition among Members in general. The Exchange does not believe it needs to otherwise address questions about market competition in the context of this filing because the proposed fees are so clearly consistent with the Act based on its Cost Analysis. The Exchange also believes that this level of diligence and transparency is called for by the requirements of Section 19(b)(1) under the Act,[28] and Rule 19b–4 thereunder,[29]

[19] The Exchange notes that it receives complex market data for all U.S. options exchanges that offer complex functionality from direct feeds from The Options Price Reporting Authority (''OPRA'').

[20] *See* ISE Options 7 Pricing Schedule, Section 10, H., *available at https://listingcenter.nasdaq.com/rulebook/ise/rules/ISE%20Options%207* (assessing Professional internal and external distributors $3,000 per month, plus $20 per month per controlled device for ISE's Top Quote Feed).

[21] *See* Market at a Glance, U.S. Options Market Volume Summary, *available at https://www.miaxoptions.com/* (last visited April 11, 2023).

[22] Fees for the NYSE Arca Options Top Feed, which is the comparable product to ToM, are $3,000 per month for access (internal use) and an additional $2,000 per month for redistribution (external distribution), compared to the Exchange's proposed fees of $2,000 and $3,000 for Internal and External Distributors, respectively. In addition, for its NYSE Arca Options Top Feed, NYSE Arca charges for three different categories of non-display usage, and user fees, both of which the Exchange does not propose to charge, causing the overall cost of NYSE Arca Options Top Feed to far exceed the Exchange's proposed rates. *See* NYSE Acra Options Proprietary Market Data Fees, *available at: https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Options_Proprietary_Data_Fee_Schedule.pdf.*

[23] *See supra* note 20.

[24] *Id.*

[25] *See* NYSE American Options Proprietary Market Data Fees, *available at https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Options_Market_Data_Fee_Schedule.pdf.*

[26] *See* supra note 21.

[27] *Id.*

[28] 15 U.S.C. 78s(b)(1).

[29] 17 CFR 240.19b–4.

with respect to the types of information self-regulatory organizations (''SROs'') should provide when filing fee changes, and Section 6(b) of the Act,[30] which requires, among other things, that exchange fees be reasonable and equitably allocated,[31] not designed to permit unfair discrimination,[32] and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[33] This rule change proposal addresses those requirements, and the analysis and data in this section are designed to clearly and comprehensively show how they are met.[34]

As noted above, the Exchange has conducted and recently updated a study of its aggregate costs to produce the ToM and cToM data feeds—the Cost Analysis.[35] The Cost Analysis required a detailed analysis of the Exchange's aggregate baseline costs, including a determination and allocation of costs for core services provided by the Exchange—transactions, market data, membership services, physical connectivity, and ports (which provide order entry, cancellation and modification functionality, risk functionality, ability to receive drop copies, and other functionality). The Exchange separately divided its costs between those costs necessary to deliver each of these core services, including infrastructure, software, human resources (*i.e.,* personnel), and certain general and administrative expenses (collectively, ''cost drivers'').

As an initial step, the Exchange determined the total cost for the Exchange and the affiliated markets. That total cost was then divided among the Exchange and each of its affiliated markets based on a number of factors, including server counts, additional hardware and software utilization, current or anticipated functional or non-functional development projects, capacity needs, end-of-life or end-of-service intervals, number of members, market model (*e.g.,* price time or pro-rata), which may impact message traffic, individual system architectures that impact platform size,[36] storage needs, dedicated infrastructure versus shared infrastructure allocated per platform based on the resources required to support each platform, number of available connections, and employees allocated time. This will result in different allocation percentages among the Exchange and its affiliated markets. Meanwhile this allocation methodology ensures that no portion of any cost was allocated twice or double-counted between the Exchange and its affiliated markets.

Next, the Exchange adopted an allocation methodology with thoughtful and consistently applied principles to guide how much of a particular cost amount allocated to the Exchange pursuant to the above methodology should be allocated within the Exchange to each core service. For instance, fixed costs that are not driven by client activity (*e.g.,* message rates), such as data center costs, were allocated more heavily to the provision of physical connectivity (60.6% of total expense amount allocated), with smaller allocations to additional Limited Service MEI Ports (13.3%), and the remainder to the provision of membership services, transaction execution and market data services (26.1%). This next level of the allocation methodology at the individual exchange level also took into account a number of factors similar to those set forth under the first allocation methodology described above, to determine the appropriate allocation to connectivity or market data versus what is to be allocated to providing other services. The allocation methodology was developed through an assessment of costs with senior management intimately familiar with each area of the Exchange's operations. After adopting this allocation methodology, the Exchange then applied an estimated allocation of each Cost Driver to each core service, resulting in the cost allocations described below. Each of the below cost allocations is unique to the Exchange and represents a percentage of overall cost that was allocated to the Exchange pursuant to the initial allocation described above.

By allocating segmented costs to each core service, the Exchange was able to estimate by core service the potential margin it might earn based on different fee models. The Exchange notes that as a non-listing venue it has five primary sources of revenue that it can potentially use to fund its operations: transaction, access, membership, regulatory, and market data fees. Accordingly, the Exchange generally must cover its expenses from these four primary sources of revenue. The Exchange also notes that as a general matter each of these sources of revenue is based on services that are interdependent. For instance, the Exchange's system for executing transactions is dependent on physical hardware and connectivity; only Members and parties that they sponsor to participate directly on the Exchange may submit orders to the Exchange; many Members (but not all) consume market data from the Exchange in order to trade on the Exchange; and, the Exchange consumes market data from external sources in order to comply with regulatory obligations. Accordingly, given this interdependence, the allocation of costs to each service or revenue source required judgment of the Exchange and was weighted based on estimates of the Exchange that the Exchange believes are reasonable, as set forth below. While there is no standardized and generally accepted methodology for the allocation of an exchange's costs, the Exchange's methodology is the result of an extensive review and analysis and will be consistently applied going forward for any other potential fee proposals. In the absence of the Commission attempting to specify a methodology for the allocation of exchanges' interdependent costs, the Exchange will continue to be left with its best efforts to attempt to conduct such an allocation in a thoughtful and reasonable manner.

Through the Exchange's extensive Cost Analysis, which was again recently updated to focus solely on the provision of ToM and cToM data feeds, the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of ToM and cToM data feeds, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of ToM

[30] 15 U.S.C. 78f(b).

[31] 15 U.S.C. 78f(b)(4).

[32] 15 U.S.C. 78f(b)(5).

[33] 15 U.S.C. 78f(b)(8).

[34] In 2019, Commission staff published guidance suggesting the types of information that SROs may use to demonstrate that their fee filings comply with the standards of the Exchange Act (''Fee Guidance''). While the Exchange understands that the Fee Guidance does not create new legal obligations on SROs, the Fee Guidance is consistent with the Exchange's view about the type and level of transparency that exchanges should meet to demonstrate compliance with their existing obligations when they seek to charge new fees. *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019) *available at https://www.sec.gov/tm/staff-guidancesro-rule-filings-fees.*

[35] The Exchange notes that its Cost Analysis is based on that conducted by MEMX, LLC (''MEMX''). *See* Securities Exchange Act Release Nos. 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26); *and* 96430 (December 1, 2022), 87 FR 75083 (December 7, 2022) (SR–MEMX–2022–32). The Exchange notes that the percentage allocations and cost levels are based on the Exchange's 2023 estimated budget and may differ from those provided by MEMX for a number of reasons, including the Exchange's ability to allocate costs among multiple exchanges while MEMX allocates cost to a single exchange.

[36] For example, the Exchange maintains 24 matching engines, MIAX Pearl Options maintains 12 matching engines, MIAX Pearl Equities maintains 24 matching engines, and MIAX Emerald maintains 12 matching engines.

and cToM data feeds, and thus bears a relationship that is, ''in nature and closeness,'' directly related to ToM and cToM data feeds. Based on its analysis, the Exchange calculated its aggregate annual costs for providing the ToM and cToM data feeds to be $650,680. This results in an estimated monthly cost for providing ToM and cToM data feeds of $54,223 (rounded to the nearest dollar when dividing the aggregate annual cost by 12 months). In order to cover operating costs and earn a reasonable profit on its market data, the Exchange has determined it is necessary to charge fees for its proprietary data products, and, as such, the Exchange is proposing to modify its Fee Schedule, as set forth above. With the proposed fee changes, the Exchange anticipates annual revenue for ToM and cToM to be $840,000 (or $70,000 per month combined).

Costs Related to Offering ToM and cToM Data Feeds

The following chart details the individual line-item (annual) costs considered by the Exchange to be related to offering the ToM and cToM data feeds to its Members and other customers, as well as the percentage of the Exchange's overall costs that such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 2.4% of its overall Human Resources cost to offering ToM and cToM data feeds).

Cost drivers	Costs	Percent of all
Human Resources	$367,278	2.4
Network Infrastructure (fiber connectivity)	1,695	1.5
Data Center	17,371	1.5
Hardware and Software Maintenance & Licenses	21,375	1.5
Depreciation	34,091	0.9
Allocated Shared Expenses	208,870	2.6
Total	650,680	2.1

Human Resources

For personnel costs (Human Resources), the Exchange calculated an allocation of employee time for employees whose functions include directly providing services necessary to offer the ToM and cToM data feeds, including performance thereof, as well as personnel with ancillary functions related to establishing and providing such services (such as information security and finance personnel). The Exchange notes that it and its affiliated markets have approximately 184 employees (excluding employees at non-options exchange subsidiaries of Miami International Holdings, Inc. (''MIH''), the holding company of the Exchange and its affiliates, MIAX Pearl and MIAX Emerald), and each department leader has direct knowledge of the time spent by each employee with respect to the various tasks necessary to operate the Exchange. Specifically, twice a year and as needed with additional new hires and new project initiatives, in consultation with employees as needed, managers and department heads assign a percentage of time to every employee and then allocate that time amongst the Exchange and its affiliated markets to determine that market's individual Human Resources expense. Then, again managers and department heads assign a percentage of each employee's time allocated to the Exchange into buckets including network connectivity, ports, market data, and other exchange services. This process ensures that every employee is 100% allocated, ensuring there is no double counting between the Exchange and its affiliated markets.

The estimates of Human Resources cost were therefore determined by consulting with such department leaders, determining which employees are involved in tasks related to providing the ToM and cToM data feeds, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of their time such employees devote to tasks related to providing the ToM and cToM data feeds. The Exchange notes that senior level executives were allocated Human Resources costs to the extent the Exchange believed they are involved in overseeing tasks related to providing the ToM and cToM data feeds. The Exchange's cost allocation for employees who perform work in support of generating and disseminating the ToM and cToM data feeds on behalf of the Exchange's options trading platform arrived at a full time equivalent (''FTE'') of 1.2 FTEs. This includes personnel from the following Exchange departments that are predominately involved in producing Exchange market data: Business Systems Development, Trading Systems Development, Systems Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. The Human Resources cost was calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Network Infrastructure

The Network Infrastructure cost includes cabling and switches required to generate and disseminate the ToM and cToM data feeds. The Network Infrastructure cost was narrowly estimated by focusing on the servers used at the Exchange's primary and back-up data centers specifically for the ToM and cToM data feeds. Further, as certain servers are only partially utilized to generate and disseminate the ToM and cToM data feeds, only the percentage of such servers devoted to generating and disseminating the ToM and cToM data feeds was included (*i.e.,* the capacity of such servers allocated to the ToM and cToM data feeds).[37]

Data Center

The Exchange does not own the primary data center or the secondary data center, but instead leases space in data centers operated by third parties where the Exchange houses servers, switches and related equipment. Data Center costs include an allocation of the costs the Exchange incurs to provide the

[37] The Exchange understands that the Investors Exchange, Inc. (''IEX'') and MEMX both allocated a percentage of their servers to the production and dissemination of market data to support proposed market data fees. *See* Securities Exchange Act Release No. 94630 (April 7, 2022), 87 FR 21945, at page 21949 (April 13, 2022) (SR–IEX–2022–02). *See also supra* note 35. The Exchange does not have insight into either MEMX's or IEX's technology infrastructure or what their determinations were based on. However, the Exchange reviewed its own technology infrastructure and believes based on its design, it is more appropriate for the Exchange to allocate a portion of its network infrastructure cost to market data based on a percentage of overall cost, not on a per server basis.

ToM and cToM data feeds in the third-party data centers where the Exchange maintains its equipment, as well as related costs. As the Data Center costs are primarily for space, power, and cooling of servers, the Exchange allocated 1.5% to the applicable Data Center costs for the ToM and cToM data feeds. The Exchange believes it is reasonable to apply the same proportionate percentage of Data Center costs to that of Network Infrastructure.

Hardware and Software Maintenance and Licenses

Hardware and Software Maintenance and Licenses includes those licenses used to operate and monitor physical assets necessary to offer the ToM and cToM data feeds. Because the hardware and software license fees are correlated to the servers used by the Exchange, the Exchange again applied an allocation of 0.5% of its costs for Hardware and Software Maintenance and Licenses to the ToM and cToM data feeds.[38]

Monthly Depreciation

The vast majority of the hardware and software the Exchange uses with respect to its operations, including the software used to generate and disseminate the ToM and cToM data feeds has been developed in-house and the cost of such development is depreciated over time. Accordingly, the Exchange included Depreciation costs related to depreciated hardware and software used to generate and disseminate the ToM and cToM data feeds. The Exchange also included in the Depreciation costs certain budgeted improvements that the Exchange intends to capitalize and depreciate with respect to the ToM and cToM data feeds in the near-term. As with the other allocated costs in the Exchange's updated Cost Analysis, the Depreciation cost was therefore narrowly tailored to depreciation related to the ToM and cToM data feeds. The Exchange also notes that this allocation differs from its affiliated markets due to a number of factors, such as the age of physical assets and software (*e.g.,* older physical assets and software were previously depreciated and removed from the allocation), or certain system enhancements that required new physical assets and software, thus providing a higher contribution to the depreciated cost.

Allocated Shared Expenses

Finally, certain general shared expenses were allocated to the ToM and cToM data feeds. However, contrary to its prior cost analysis, rather than taking the whole amount of general shared expenses and applying an allocated percentage, the Exchange has narrowly selected specific general shared expenses relevant to the cToM data feed. The costs included in general shared expenses allocated to the ToM and cToM data feeds include office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications costs. The cost of paying individuals to serve on the Exchange's Board of Directors or any committee was not allocated to providing ToM and cToM data feeds.

Cost Analysis—Additional Discussion

In conducting its Cost Analysis, the Exchange did not allocate any of its expenses in full to any core service and did not double-count any expenses. Instead, as described above, the Exchange identified and allocated applicable Cost Drivers across its core services and used the same approach to analyzing costs to form the basis of separate proposals to amend fees for connectivity and port services[39] and this filing proposing fees for ToM and cToM. Thus, the Exchange's allocations of cost across core services were based on real costs of operating the Exchange and were not double-counted across the core services or their associated revenue streams. The proposed fees for ToM and cToM data feeds are designed to permit the Exchange to cover the costs allocated to providing cToM data with a mark-up that the Exchange believes is modest (approximately 23%, which could decrease over time[40]), which the Exchange believes is fair and reasonable after taking into account the costs related to creating, generating, and disseminating the ToM and cToM data feeds and the fact that the Exchange will need to fund future expenditures (increased costs, improvements, etc.). The Exchange also reiterates that prior to July of 2021, the month in which it first proposed to adopt fees for cToM, the Exchange has not previously charged any fees for cToM and its allocation of costs to cToM was part of a holistic allocation that also allocated costs to other core services without double-counting any expenses. The Exchange is owned by a holding company that is the parent company of four exchange markets and, therefore, the Exchange and its affiliated markets must allocate shared costs across all of those markets accordingly, pursuant to the above-described allocation methodology. In contrast, the Investors Exchange LLC (''IEX'') and MEMX, which are currently each operating only one exchange, in their recent non-transaction fee filings can allocate the entire amount of that same cost to a single exchange. This can result in lower profit margins for the non-transaction fees proposed by IEX and MEMX because the single allocated cost does not experience the efficiencies and synergies associated with shared costs across multiple platforms.[41] The Exchange and its affiliated markets must share a single cost, which results in cost efficiencies that cause a broader gap between the allocated cost amount and projected revenue, even though the fee levels being proposed are lower or similar to competing markets (as described above). To the extent that the application of a cost-based standard results in Commission Staff making determinations as to the appropriateness of certain profit margins, the Commission Staff must consider whether the proposed fee level is comparable to, or on parity with, the same fee charged by competing exchanges and how different cost allocation methodologies (such as across multiple markets) may result in different profit margins for comparable fee levels. If it is the case that the Commission Staff is making determinations as to appropriate profit margins, the Exchange believes that Staff should be clear to all market

[38] This expense may be less than the Exchange's affiliated markets, specifically MIAX Pearl, because, unlike the Exchange, MIAX Pearl (the options and equities markets) maintains an additional gateway to accommodate its member's access and connectivity needs. This added gateway contributes to the difference in allocations between the Exchange and MIAX Pearl.

[39] *See* MIAX Exchange Group Alert, ''MIAX Options, Pearl Options and Emerald Options Exchanges—January 1, 2023 Non-Transaction Fee Changes,'' issued December 9, 2022, *available at https://www.miaxoptions.com/alerts/2022/12/09/miax-options-pearl-options-and-emerald-options-exchanges-january-1-2023-non-0.*

[40] The Exchange believes that its profit margins could decrease if U.S. inflation continues at its current rate. *See, e.g., https://www.usinflationcalculator.com/inflation/current-inflation-rates/* (last visited April 11, 2023).

[41] The Exchange acknowledges that IEX included in its proposal to adopt market data fees after offering market data for free an analysis of what its projected revenue would be if all of its existing customers continued to subscribe versus what its projected revenue would be if a limited number of customers subscribed due to the new fees. *See* Securities Exchange Act Release No. 94630 (April 7, 2022), 87 FR 21945 (April 13, 2022) (SR–IEX–2022–02). MEMX did not include a similar analysis in either of its recent non-transaction fee proposals. *See, e.g., supra* note 35. The Exchange does not believe a similar analysis would be useful here because it is amending existing fees, not proposing to charge a new fee where existing subscribers may terminate connections because they are no longer enjoying the service at no cost.

participants as to what they determine is an appropriate profit margin and should apply such determinations consistently and, in the case of certain legacy exchanges, retroactively, if such standards are to avoid having a discriminatory effect. Further, the proposal reflects the Exchange's efforts to control its costs, which the Exchange does on an ongoing basis as a matter of good business practice. A potential profit margin should not be judged alone based on its size, but is also indicative of costs management and whether the ultimate fee reflects the value of the services provided. For example, a profit margin on one exchange should not be deemed excessive where that exchange has been successful in controlling its costs, but not excessive where on another exchange where that exchange is charging comparable fees but has a lower profit margin due to higher costs. Doing so could have the perverse effect of not incentivizing cost control where higher costs alone could be used to justify fees increases.

Accordingly, while the Exchange believes in transparency around costs and potential margins, as well as periodic review of revenues and applicable costs (as discussed below), the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning supra-competitive profits, and the Exchange believes the Cost Analysis and related projections demonstrate this fact.

The Exchange notes that the Cost Analysis is based on the Exchange's 2023 fiscal year of operations and projections. It is possible, however, that such costs will either decrease or increase. To the extent the Exchange sees growth in use of ToM and cToM data feeds it will receive additional revenue to offset future cost increases. However, if use of ToM and cToM data feeds is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs.

Similarly, the Exchange expects that it would propose to decrease fees in the event that revenue materially exceeds current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (*e.g.,* to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and expects that it would propose to increase fees in the event that revenues fail to cover its costs and a reasonable mark-up, or decrease fees in the event that revenue or the mark-up materially exceeds current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, the Exchange believes that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

Implementation

The proposed rule changes will be immediately effective.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) [42] of the Act in general, and furthers the objectives of Section 6(b)(4) [43] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. Additionally, the Exchange believes that the proposed fees are consistent with the objectives of Section 6(b)(5) [44] of the Act in that they are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to a free and open market and national market system, and, in general, to protect investors and the public interest, and, particularly, are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange notes prior to addressing the specific reasons the Exchange believes the proposed fees and fee structure are reasonable, equitably allocated and not unreasonably discriminatory, that the proposed fees are consistent with the fee amounts charged by competing U.S. securities exchanges. For this reason, the Exchange believes that the proposed fees are consistent with the Act generally, and Section 6(b)(5) [45] of the Act in particular.

As noted above, in the six years since the Exchange adopted Complex Order functionality, the Exchange has grown its monthly complex market share from 0% to 10.86% of the total electronic complex non-index volume executed on U.S. options exchanges offering complex functionality for the month of November 2022.[46] One of the primary objectives of the Exchange is to provide competition and to reduce fixed costs imposed upon the industry. Consistent with this objective, the Exchange believes that this proposal reflects a simple, competitive, reasonable, and equitable pricing structure.

Reasonableness

Overall. With regard to reasonableness, the Exchange understands that the Commission has traditionally taken a market-based approach to examine whether the SRO making the fee proposal was subject to significant competitive forces in setting the terms of the proposal. The Exchange understands that in general the analysis considers whether the SRO has demonstrated in its filing that (i) there are reasonable substitutes for the product or service; (ii) ''platform'' competition constrains the ability to set the fee; and/or (iii) revenue and cost analysis shows the fee would not result in the SRO taking supra-competitive profits. If the SRO demonstrates that the fee is subject to significant competitive forces, the Exchange understands that in general the analysis will next consider whether there is any substantial countervailing basis to suggest the fee's terms fail to meet one or more standards under the Exchange Act. The Exchange further understands that if the filing fails to demonstrate that the fee is constrained by competitive forces, the SRO must provide a substantial basis, other than competition, to show that it is consistent with the Exchange Act, which may include production of relevant revenue and cost data pertaining to the product or service.

The Exchange has not determined its proposed overall market data fees based on assumptions about market competition, instead relying upon a cost-plus model to determine a reasonable fee structure that is informed by the Exchange's understanding of different uses of the products by

[42] 15 U.S.C. 78f.

[43] 15 U.S.C. 78f(b)(4).

[44] 15 U.S.C. 78f(b)(5).

[45] 15 U.S.C. 78f(b)(5).

[46] *See supra* note 21.

different types of participants. In this context, the Exchange believes the proposed fees overall are fair and reasonable as a form of cost recovery plus the possibility of a reasonable return for the Exchange's aggregate costs of offering the ToM and cToM data feeds. The Exchange believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup some or all of Exchange's annual costs of providing ToM and cToM data with a reasonable mark-up. As discussed in the Purpose section, the Exchange estimates this fee filing will result in annual revenue of approximately $840,000, representing a potential mark-up of just 23% over the cost of providing ToM and cToM data. Accordingly, the Exchange believes that this fee methodology is reasonable because it allows the Exchange to recoup some or all of its expenses for providing the ToM and cToM data products (with any additional revenue representing no more than what the Exchange believes to be a reasonable rate of return). The Exchange also believes that the proposed fees are reasonable because they are generally less than the fees charged by competing options exchanges for comparable market data products, notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of market data.

The Exchange believes the proposed fees for the ToM and cToM data feeds are reasonable when compared to fees for comparable products, compared to which the Exchange's proposed fees are generally lower, as well as other comparable data feeds priced significantly higher than the Exchange's proposed fees for the ToM and cToM data feeds.[47]

Internal Distribution Fees. The Exchange believes that it is reasonable to charge fees to access the ToM and cToM data feeds for Internal Distribution because of the value of such data to subscribers in their profit-generating activities. The Exchange also believes that the proposed monthly Internal Distribution fee for cToM is reasonable as it is similar to the amount charged by at least one other exchange of comparable size for comparable data products, and lower than the fees charged by other exchange for comparable data products.[48]

External Distribution Fees. The Exchange believes that it is reasonable to charge External Distribution fees for the ToM and cToM data feeds because vendors receive value from redistributing the data in their business products provided to their customers. The Exchange believes that charging External Distribution fees is reasonable because the vendors that would be charged such fees profit by re-transmitting the Exchange's market data to their customers. These fees would be charged only once per month to each vendor account that redistributes any ToM and cToM data feeds, regardless of the number of customers to which that vendor redistributes the data.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the ToM and cToM data feeds are reasonable.

Equitable Allocation

Overall. The Exchange believes that its proposed fees are reasonable, fair, and equitable, and not unfairly discriminatory because they are designed to align fees with services provided. The Exchange believes the proposed fees for the ToM and cToM data feeds are allocated fairly and equitably among the various categories of users of the feeds, and any differences among categories of users are justified and appropriate.

The Exchange believes that the proposed fees are equitably allocated because they will apply uniformly to all data recipients that choose to subscribe to the ToM and cToM data feeds. Any subscriber or vendor that chooses to subscribe to the ToM and cToM data feeds is subject to the same Fee Schedule, regardless of what type of business they operate, and the decision to subscribe to one or more ToM and cToM data feeds is based on objective differences in usage of ToM and cToM data feeds among different Members, which are still ultimately in the control of any particular Member. The Exchange believes the proposed pricing of the ToM and cToM data feeds is equitably allocated because it is based, in part, upon the amount of information contained in each data feed and the value of that information to market participants.

Internal Distribution Fees. The Exchange believes the proposed monthly fees for Internal Distribution of the ToM and cToM data feeds are equitably allocated because they would be charged on an equal basis to all data recipients that receive the ToM and cToM data feeds for internal distribution, regardless of what type of business they operate.

External Distribution Fees. The Exchange believes the proposed monthly fees for External Distribution of the ToM and cToM data feeds are equitably allocated because they would be charged on an equal basis to all data recipients that receive the ToM and cToM data feeds that choose to redistribute the feeds externally, regardless of what business they operate. The Exchange also believes that the proposed monthly fees for External Distribution are equitably allocated when compared to lower proposed fees for Internal Distribution because data recipients that are externally distributing ToM and cToM data feeds are able to monetize such distribution and spread such costs amongst multiple third party data recipients, whereas the Internal Distribution fee is applicable to use by a single data recipient (and its affiliates).

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess Internal Distributors fees that are less than the fees assessed for External Distributors for subscriptions to the ToM and cToM data feeds because Internal Distributors have limited, restricted usage rights to the market data, as compared to External Distributors, which have more expansive usage rights. All Members and non-Members that decide to receive any market data feed of the Exchange (or its affiliates, MIAX Pearl and MIAX Emerald), must first execute, among other things, the MIAX Exchange Group Exchange Data Agreement (the ''Exchange Data Agreement'').[49] Pursuant to the Exchange Data Agreement, Internal Distributors are restricted to the ''internal use'' of any market data they receive. This means that Internal Distributors may only distribute the Exchange's market data to the recipient's officers and employees and its affiliates.[50] External Distributors may distribute the Exchange's market data to persons who are not officers, employees or affiliates of the External Distributor,[51] and may charge their own fees for the redistribution of such market data. External Distributors may monetize their receipt of the ToM and cToM data feeds by charging their customers fees for receipt of the Exchange's cToM data. Internal Distributors do not have the same ability to monetize the Exchange's ToM and cToM data feeds. Accordingly, the Exchange believes it is fair, reasonable and not unfairly discriminatory to assess External Distributors a higher fee

[47] *See supra* notes 20, 22, and 25, and accompanying text.

[48] *See, e.g., supra* notes 20, 22, and 25.

[49] *See* Exchange Data Agreement, *available at https://miaxweb2.pairsite.com/sites/default/files/page-files/MIAX_Exchange_Group_Data_Agreement_09032020.pdf.*

[50] *See id.*

[51] *See id.*

for the Exchange's ToM and cToM data feeds as External Distributors have greater usage rights to commercialize such market data and can adjust their own fee structures if necessary.

The Exchange also utilizes more resources to support External Distributors versus Internal Distributors, as External Distributors have reporting and monitoring obligations that Internal Distributors do not have, thus requiring additional time and effort of Exchange staff. For example, External Distributors have monthly reporting requirements under the Exchange's Market Data Policies.[52] Exchange staff must then, in turn, process and review information reported by External Distributors to ensure the External Distributors are redistributing cToM data in compliance with the Exchange's Market Data Agreement and Policies.

The Exchange believes the proposed cToM fees are equitable and not unfairly discriminatory because the fee level results in a reasonable and equitable allocation of fees amongst subscribers for similar services, depending on whether the subscriber is an Internal or External Distributor. Moreover, the decision as to whether or not to purchase market data is entirely optional to all market participants. Potential purchasers are not required to purchase the market data, and the Exchange is not required to make the market data available. Purchasers may request the data at any time or may decline to purchase such data. The allocation of fees among users is fair and reasonable because, if market participants decide not to subscribe to the data feed, firms can discontinue their use of the cToM data.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the ToM and cToM data feeds are equitably allocated.

The Proposed Fees Are Not Unfairly Discriminatory

The Exchange believes the proposed fees for the ToM and cToM data feeds are not unfairly discriminatory because any differences in the application of the fees are based on meaningful distinctions between customers, and those meaningful distinctions are not unfairly discriminatory between customers.

Overall. The Exchange believes that the proposed fees are not unfairly discriminatory because they would apply to all data recipients that choose to subscribe to the same ToM and cToM data feeds. Any vendor or subscriber that chooses to subscribe to the ToM and cToM data feeds is subject to the same Fee Schedule, regardless of what type of business they operate. In sum, each vendor or subscriber has the ability to choose the best business solution for itself. The Exchange does not believe it is unfairly discriminatory to base pricing upon the amount of information contained in each data feed and the value of that information to market participants.

Internal Distribution Fees. The Exchange believes the proposed monthly fees for Internal Distribution of the ToM and cToM data feeds are not unfairly discriminatory because they would be charged on an equal basis to all data recipients that receive the same ToM and cToM data feeds for internal distribution, regardless of what type of business they operate.

External Distribution Fees. The Exchange believes the proposed monthly fees for redistributing the ToM and cToM data feeds are not unfairly discriminatory because they would be charged on an equal basis to all data recipients that receive the same ToM and cToM data feeds that choose to redistribute the feed(s) externally. The Exchange also believes that having higher monthly fees for External Distribution than Internal Distribution is not unfairly discriminatory because data recipients that are externally distributing ToM and cToM data feeds are able to monetize such distribution and spread such costs amongst multiple third party data recipients, whereas the Internal Distribution fee is applicable to use by a single data recipient (and its affiliates).

For all of the foregoing reasons, the Exchange believes that the proposed fees for the Exchange Data Feeds are not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[53] the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange does not believe that the proposed fees place certain market participants at a relative disadvantage to other market participants because, as noted above, the proposed fees are associated with usage of the data feed by each market participant based on whether the market participant internally or externally distributes the Exchange data, which are still ultimately in the control of any particular Member, and such fees do not impose a barrier to entry to smaller participants. Accordingly, the proposed fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed fees reflects the types of data consumed by various market participants and their usage thereof.

Inter-Market Competition

The Exchange does not believe the proposed fees place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, market participants are not forced to subscribe to either data feed, as described above. Additionally, other exchanges have similar market data fees with comparable rates in place for their participants.[54] The proposed fees are based on actual costs and are designed to enable the Exchange to recoup its applicable costs with the possibility of a reasonable profit on its investment as described in the Purpose and Statutory Basis sections. Competing exchanges are free to adopt comparable fee structures subject to the Commission's rule filing process. Allowing the Exchange, or any new market entrant, to waive fees (as the Exchange did for cToM) for a period of time to allow it to become established encourages market entry and thereby ultimately promotes competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[55] and Rule 19b–4(f)(2)[56] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission

[52] *See* Section 6 of the Exchange's Market Data Policies, *available at https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Exchange_Group_Market_Data_Policies_07202021.pdf.*

[53] 15 U.S.C. 78f(b)(8).

[54] *See supra* notes 20, 22, and 25, and accompanying text.

[55] 15 U.S.C. 78s(b)(3)(A)(ii).

[56] 17 CFR 240.19b–4(f)(2).

takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2023–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2023–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–MIAX–2023–17 and should be submitted on or before May 16, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[57]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08653 Filed 4–24–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–508, OMB Control No. 3235–0565]

Proposed Collection; Comment Request; Extension: Rule 482

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''Paperwork Reduction Act''), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Like most issuers of securities, when an investment company (''fund'')[1] offers its shares to the public, its promotional efforts become subject to the advertising restrictions of the Securities Act of 1933 (15 U.S.C. 77) (the ''Securities Act''). In recognition of the particular problems faced by funds that continually offer securities and wish to advertise their securities, the Commission has previously adopted advertising safe harbor rules. The most important of these is rule 482 (17 CFR 230.482) under the Securities Act, which, under certain circumstances, permits funds to advertise investment performance data, as well as other information. Rule 482 advertisements are deemed to be ''prospectuses'' under Section 10(b) of the Securities Act (15 U.S.C. 77j(b)).

Rule 482 contains certain requirements regarding the disclosure that funds are required to provide in qualifying advertisements. These requirements are intended to encourage the provision to investors of information that is balanced and informative, particularly in the area of investment performance. For example, a fund is required to include disclosure advising investors to consider the fund's investment objectives, risks, charges and expenses, and other information described in the fund's prospectus, and highlighting the availability of the fund's prospectus. In addition, rule 482 advertisements that include performance data of open-end funds or insurance company separate accounts offering variable annuity contracts are required to include certain standardized performance information, information about any sales loads or other nonrecurring fees, and a legend warning that past performance does not guarantee future results. Such funds including performance information in rule 482 advertisements are also required to make available to investors month-end performance figures via website disclosure or by a toll-free telephone number, and to disclose the availability of the month-end performance data in the advertisement. The rule also sets forth requirements regarding the prominence of certain disclosures, requirements regarding advertisements that make tax representations, requirements regarding advertisements used prior to the effectiveness of the fund's registration statement, requirements regarding the timeliness of performance data. In addition, rule 482(b) describes the information that is required to be included in an advertisement, including a cautionary statement under rule 482(b)(4) disclosing the particular risks associated with investing in a money market fund.

On October 26, 2022, the Commission adopted rule and form amendments that modernize the requirements for annual and semi-annual shareholder reports provided by open-end management investment companies.[2] The Commission also adopted amendments to the advertising rules for registered investment companies and business development companies to promote more transparent and balanced statements about investment costs. The advertising rule amendments require that investment company advertisements providing fee and expense figures include: (1) the maximum amount of any sales load or any other nonrecurring fee; and (2) the total annual expenses without any fee waiver or expense reimbursement arrangement. Under the amendments to rule 482, investment company fee and

[57] 17 CFR 200.30–3(a)(12).

[1] ''Investment company'' refers to both investment companies registered under the Investment Company Act of 1940 (''Investment Company Act'') (15 U.S.C. 80a–1 *et seq.*) and business development companies.

[2] Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements, Investment Company Act Release No. 34731 (Oct. 26, 2022), 87 FR 72758 (Nov. 25, 2022) (the ''Adopting Release'').

expense presentations in advertisements must include timely and prominent information about a fund's maximum sales load (or any other nonrecurring fee) and gross total annual expenses, based on the methods of computation that the company's Investment Company Act or Securities Act registration statement form prescribes for a prospectus.

Rule 482 advertisements must be filed with the Commission or, in the alternative, with the Financial Industry Regulatory Authority (''FINRA'').[3] This information collection differs from many other federal information collections that are primarily for the use and benefit of the collecting agency.

Rule 482 contains requirements that are intended to encourage the provision to investors of information that is balanced and informative, particularly in the area of investment performance. The Commission is concerned that in the absence of such provisions fund investors may be misled by deceptive rule 482 advertisements and may rely on less-than-adequate information when determining in which funds they should invest money. As a result, the Commission believes it is beneficial for funds to provide investors with balanced information in fund advertisements in order to allow investors to make better-informed decisions.

The table below summarizes our estimates associated with the amendments to rule 482 that the Adopting Release addresses:

RULE 482 PRA ESTIMATES

	Internal initial hour burdens	Internal annual burden [1]	Wage rate [2]	Internal time costs
FINAL ESTIMATES FOR RULE 482				
New general requirements re: fee and expense figure disclosure.	9 hours	6 hours [3]	$381 (blended rate for compliance attorney and senior programmer).	$2,286
Number of responses to rule 482 that include fee/expense figure disclosure.		× 36,492 [4] responses		× 36,492 responses
Total burden of new requirements for fee and expense disclosure.		218,952 hours		$83,420,712
New requirements for disclosure of fee waivers/expense reimbursement arrangements.	6 hours	4 hours [5]	$381 (blended rate for compliance attorney and senior programmer).	$1,524
Number of responses to rule 482 that disclose fee waivers/expense reimbursement arrangements.		× 36,492 responses		× 36,492 responses
Total burden of annual requirements for disclosure of fee waivers/expense reimbursement arrangements.		145,968 hours		$55,613,808
Total annual burden		364,920 hours		$139,034,520
TOTAL FINAL ESTIMATED BURDENS INCLUDING AMENDMENTS				
Current burden estimates		212,927 hours		$74,098,735
Revised burden estimate		577,847 hours		$213,133,255

Notes:

[1] Includes initial burden estimates annualized over a 3-year period.

[2] These PRA estimates assume that the same types of professionals would be involved in preparing advertisements (reflecting the proposed and final amendments to rule 482) that we believe otherwise would be involved in preparing a fund's advertisements. The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's *Office Salaries in the Securities Industry 2013*. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

[3] This estimate assumed that, after the initial 9 hours that an entity would spend on the proposed fee and expense disclosure, which we annualize over a 3-year period, the entity would incur 3 additional burden hours associated with ongoing compliance with these requirements per year. The estimate of 6 hours is based on the following calculation: ((9 initial hours/3) + 3 hours of additional ongoing burden hours) = 6 hours.

[4] The Commission estimates that there was a total of 41,953 responses to rule 482 that either were filed with FINRA or with the Commission in 2021. Of those, the Commission estimates that 1,124 were responses from closed-end funds and BDCs, and that 2,816 were responses from variable insurance contracts. The number of responses filed with the SEC is based on the average number of responses filed with the Commission from 2019–2021. The Commission assumes that, moving forward, closed-end funds and BDCs will choose to use free writing prospectuses under rule 433, and also that variable insurance contracts will not be subject to the amendments to rule 482. Therefore, we exclude closed-end funds, BDCs, and variable insurance contracts from the total responses to rule 482 for purposes of this estimate. For purposes of estimating the burden of the final rules amendments, we estimate that 38,013 responses to rule 482 are filed annually. We estimate that approximately 96% of these rule 482 responses provide fee and expense figures in qualifying advertisements and would, therefore, be required to comply with the final rule amendments regarding such information (for example, ensuring that the fee and expense figures are presented in accordance with the prominence and timeliness requirements in the amendments to rule 482).

[3] See note to rule 482(h) under the Securities Act, which states that ''these advertisements, unless filed with [FINRA], are required to be filed in accordance with the requirements of § 230.497.'' See also rule 24b–3 under the Investment Company Act (17 CFR 270.24b–3), which provides that any sales material, including rule 482 advertisements, shall be deemed filed with the Commission for purposes of Section 24(b) of the Investment Company Act upon filing with FINRA.

[5] This estimate assumed that, after the initial 6 hours that an entity would spend on the proposed fee waiver and expense reimbursement requirements, which we annualized over a 3-year period, the entity would incur 2 additional burden hours associated with ongoing compliance with these requirements per year. The estimate of 4 hours is based on the following calculation ((6 initial hours/3) + 2 hours of additional ongoing burden hours) = 4 hours.

The table above summarizes our PRA initial and ongoing annual burden estimates associated with rule 482, as amended. In the aggregate, we estimate the total annual burden to comply with amended rule 482 to be 577,847 hours, at an average time cost of $213,133,255.

The information provided under rule 482 will not be kept confidential. The provision of information under rule 482 is necessary to obtain the benefits of the safe harbor offered by the rule.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by June 26, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: April 19, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08648 Filed 4–24–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97326; File No. SR–EMERALD–2023–10]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Increase Fees for the ToM Market Data Product and Establish Fees for the cToM Market Data Product

April 19, 2023.

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 April 11, 2023, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the ''Fee Schedule'') to amend the fees for two market data products by (i) amending the fees for MIAX Emerald Top of Market (''ToM''); and (ii) establishing fees for MIAX Emerald Complex Top of Market (''cToM'').

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fees for two market data products by (i) amending the fees for ToM; and (ii) establishing fees for cToM. The proposed fees will be immediately effective. The Exchange initially filed the proposal on December 28, 2022 (SR–EMERALD–2022–37) (the ''Initial Proposal'').[3] On February 23, 2023, the Exchange withdrew the Initial Proposal and replaced it with a revised proposal (SR–EMERALD–2023–04) (the ''Second Proposal'').[4] The Exchange recently withdrew the Second Proposal and replaced it with this current proposal (SR–EMERALD–2023–10).

The Exchange previously filed several proposals to adopt fees for cToM.[5] The Exchange notes that these prior proposals included an analysis of the costs underlying the compilation and dissemination of the proposed cToM fees. The Exchange previously included a cost analysis in the Initial Proposal. As described more fully below, the Exchange provides an updated cost analysis that includes, among other things, additional descriptions of how the Exchange allocated costs among it and its affiliated exchanges (MIAX PEARL, LLC (''MIAX Pearl''), separately among MIAX Pearl Options and MIAX Pearl Equities, and Miami International Securities Exchange, LLC (''MIAX,'' together with MIAX Pearl, the ''affiliated markets'')) to ensure no cost was allocated more than once, as well as additional detail supporting its cost allocation processes and explanations as

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 96625 (January 10, 2023), 88 FR 2688 (January 17, 2023) (SR–EMERALD–2022–37).

[4] *See* Securities Exchange Act Release No. 97078 (March 8, 2023), 88 FR 15813 (March 14, 2023) (SR–EMERALD–2023–04).

[5] *See* Securities Exchange Act Release Nos. 92358 (July 9, 2021), 86 FR 37361 (July 15, 2021) (SR–EMERALD–2021–21); SR–EMERALD–2021–32 (withdrawn without being noticed by the Commission); 93427 (October 26, 2021), 86 FR 60310 (November 1, 2021) (SR–EMERALD–2021–34); 93811 (December 17, 2021), 86 FR 73051 (December 23, 2021) (SR–EMERALD–2021–44); 94263 (February 15, 2022), 87 FR 9766 (February 22, 2022) (SR–EMERALD–2022–06); 94715 (April 14, 2022), 87 FR 23674 (April 20, 2022) (SR–EMERALD–2022–14); 94892 (May 11, 2022), 87 FR 29963 (May 17, 2022) (SR–EMERALD–2022–18).

to why a cost allocation in this proposal may differ from the same cost allocation in a similar proposal submitted by one of its affiliated markets. Although the baseline cost analysis used to justify the proposed fees was made in the Initial Proposal, the fees themselves have not changed since the Initial Proposal and the Exchange still proposes fees that are intended to cover the Exchange's cost of providing ToM and cToM, with a reasonable mark-up over those costs. The proposed fees are intended to cover the Exchange's cost of compiling and disseminating ToM and cToM with a reasonable mark-up over those costs, accounting for ongoing increases in expenses.[6] Before setting forth the additional details regarding the proposal as well as the updated Cost Analysis conducted by the Exchange, immediately below is a description of the proposed fees.

Proposed Market Data Pricing

The Exchange offers ToM and cToM to subscribers. The Exchange notes that there is no requirement that any Member [7] or market participant subscribe to ToM or cToM or any other data feed offered by the Exchange. Instead, a Member may choose to maintain subscriptions to ToM or cToM based on their business model. The proposed fees will not apply differently based upon the size or type of firm, but rather based upon the subscriptions a firm has to ToM or cToM and their use thereof, which are based upon factors deemed relevant by each firm. The proposed pricing for ToM and cToM is set forth below.

ToM

ToM is an Exchange-only market data feed that contains top of book quotations based on options orders [8] and quotes [9] entered into the System [10] and resting on the Exchange's Simple Order Book [11] as well as administrative messages.[12] The Exchange currently charges Internal Distributors [13] $1,250 per month and External Distributors $1,750 per month for ToM. The Exchange does not currently charge, nor does it now propose to charge any additional fees based on a subscriber's use of the ToM and cToM data feeds, *e.g.,* displayed versus non-displayed use, redistribution fees, or any individual per user fees. As discussed more fully below, the Exchange recently calculated its annual aggregate costs for producing ToM to subscribers to be $317,753, or $26,479 per month (rounded to the nearest dollar when dividing the annual cost by 12 months). The Exchange proposes to amend Section 6)a) of the Fee Schedule to now charge Internal Distributors $2,000 per month and External Distributors $3,000 per month for ToM in an effort to cover the Exchange's increasing costs with compiling and producing ToM to market participants as evidenced by the Exchange's Cost Analysis detailed below.

cToM

The Exchange previously adopted rules governing the trading of Complex Orders [14] on the MIAX Emerald System in 2018,[15] ahead of the Exchange's planned launch, which took place on March 1, 2019. Shortly thereafter, the Exchange adopted the market data product, cToM, and expressly waived fees for cToM to incentivize market participants to subscribe.[16] cToM was provided free of charge for four years and the Exchange absorbed all costs associated with compiling and disseminating cToM during that entire time. As discussed more fully below, the Exchange recently calculated its annual aggregate costs for producing cToM to subscribers to be $347,543, or $28,962 per month (rounded to the nearest dollar when dividing the annual cost by 12 months). The Exchange now proposes to amend Section 6)a) of the Fee Schedule to establish fees for cToM in order to recoup its ongoing costs going forward.

In summary, cToM provides subscribers with the same information as ToM as it relates to the Strategy Book,[17] *i.e.,* the Exchange's best bid and offer for a complex strategy, with aggregate size, based on displayable orders in the complex strategy on the Exchange. However, cToM provides subscribers with the following additional information that is not included in ToM: (i) the identification of the complex strategies currently trading on the Exchange; (ii) complex strategy last sale information; and (iii) the status of securities underlying the complex strategy (*e.g.,* halted, open, or resumed). cToM is therefore a distinct market data product from ToM in that it includes additional information that is not available to subscribers that receive only ToM. ToM subscribers are not required to subscribe to cToM, and cToM subscribers are not required to subscribe to ToM.

cToM Proposed Fees

The Exchange proposes to amend Section (6)(a) of the Fee Schedule to charge Internal Distributors $2,000 per month and External Distributors $3,000 per month for the cToM data feed. The proposed fees are identical to the fees that the Exchange proposes to charge for ToM. The Exchange does not propose to adopt redistribution fees for the cToM data feed. However, the recipient of cToM data would be required to become a data subscriber and would be subject to the applicable data subscriber fees. The Exchange also does not propose to charge any additional fees based on a subscriber's use of the cToM data feed, *e.g.,* displayed versus non-displayed

[6] For example, the New York Stock Exchange, Inc.'s (''NYSE'') Secure Financial Transaction Infrastructure (''SFTI'') network, which contributes to the Exchange's connectivity cost, increased its fees by approximately 9% since 2021. Similarly, since 2021, the Exchange, and its affiliates, experienced an increase in data center costs of approximately 17% and an increase in hardware and software costs of approximately 19%. These percentages are based on the Exchange's actual 2021 and proposed 2023 budgets.

[7] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[8] The term ''order'' means a firm commitment to buy or sell option contracts. *See* Exchange Rule 100.

[9] The term ''quote'' or ''quotation'' means a bid or offer entered by a Market Maker that is firm and may update the Market Maker's previous quote, if any. The Rules of the Exchange provide for the use of different types of quotes, including Standard quotes and eQuotes, as more fully described in Rule 517. A Market Maker may, at times, choose to have multiple types of quotes active in an individual option. *See* Exchange Rule 100.

[10] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[11] The term ''Simple Order Book'' means ''the Exchange's regular electronic book of orders and quotes.'' *See* Exchange Rule 518(a)(15).

[12] *See* Fee Schedule, Section 6)a).

[13] A ''Distributor'' of MIAX data is any entity that receives a feed or file of data either directly from MIAX or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All Distributors are required to execute a MIAX Distributor Agreement. *See* Fee Schedule, Section 6)a).

[14] *See* Exchange Rule 518(a)(5) for the definition of Complex Orders.

[15] *See* Securities Exchange Act Release Nos. 84891 (December 20, 2018), 83 FR 67421 (December 28, 2018) (In the Matter of the Application of MIAX EMERALD, LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission); *and* 85345 (March 18, 2019), 84 FR 10848 (March 22, 2019) (SR–EMERALD–2019–13) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 518, Complex Orders).

[16] *See* Securities Exchange Act Release No. 85207 (February 27, 2019), 84 FR 7963 (March 5, 2019) (SR–EMERALD–2019–09) (providing a complete description of the cToM data feed).

[17] The ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

use, and does not propose to impose any individual per user fees.

As it does today for ToM, the Exchange proposes to assess cToM fees to Internal and External Distributors in each month the Distributor is credentialed to use cToM in the production environment. Also, as the Exchange does today for ToM, market data fees for cToM will be reduced for new Distributors for the first month during which they subscribe to cToM, based on the number of trading days that have been held during the month prior to the date on which that subscriber has been credentialed to use cToM in the production environment. New cToM Distributors will be assessed a pro-rata percentage of the fees listed in the table in Section 6)a) of the Fee Schedule, which is the percentage of the number of trading days remaining in the affected calendar month as of the date on which they have been credentialed to use cToM in the production environment, divided by the total number of trading days in the affected calendar month.

The Exchange also proposes to amend the paragraph below the table of fees for ToM and cToM in Section 6)a) of the Fee Schedule to make a minor, non-substantive correction by deleting the phrase ''(as applicable)'' in the first sentence following the table of fees for ToM and cToM. The purpose of this proposed change is to remove unnecessary text from the Fee Schedule.

cToM Content Is Available From Alternative Sources

cToM is not the exclusive source for Complex Order information from the Exchange. It is a business decision of market participants whether to subscribe to cToM or not. Market participants that choose not to subscribe to cToM can derive much, if not all, of the same information from other Exchange sources, including, for example, the MIAX Emerald Order Feed (''MOR'').[18] The following cToM information is included in MOR: the Exchange's best bid and offer for a complex strategy, with aggregate size, based on displayable orders in the complex strategy on the Exchange; the identification of the complex strategies currently trading on the Exchange; and the status of securities underlying the complex strategy (*e.g.,* halted, open, or resumed). In addition to MOR, complex strategy last sale information can be derived from ToM. Specifically, market participants may deduce that last sale information for multiple trades in related options series with the same timestamps disseminated via ToM are likely part of a Complex Order transaction and last sale.

Additional Discussion—cToM Background

In the six years since the Exchange adopted Complex Order functionality, the Exchange has grown its monthly complex market share from 0% to 3.03% of the total electronic complex non-index volume executed on exchanges offering electronic complex functionality for the month of November 2022.[19] During that same period, the Exchange has had a steady increase in the number of cToM subscribers. Until the Exchange initially filed to adopt cToM fees in July of 2021, the Exchange did not charge fees for cToM data provided by the Exchange.

The objective of this approach was to eliminate any fee-based barriers for Members when the Exchange launched with Complex Order functionality in 2019, which the Exchange believes has been helpful in its ability to attract order flow as a new exchange. As discussed more fully below, the Exchange recently calculated its annual aggregate costs for providing cToM at approximately $347,543. In order to establish fees that are designed to recover the aggregate costs of providing cToM plus a reasonable mark-up, the Exchange is proposing to modify its Fee Schedule, as described above. In addition to the Cost Analysis, described below, the Exchange believes that its proposed approach to market data fees is reasonable based on a comparison to competitors.

Additional Discussion—Comparison With Other Exchanges

ToM

The proposed fees for ToM are comparable to the fees currently in place for the options exchanges, particularly Nasdaq ISE, LLC (''ISE'').[20] In November 2022, the Exchange had 3.11% market share of equity options volume; for that same month, ISE had 6.19% market share of equity options volume.[21] The Exchange's proposed fees for ToM are equal to, and for Internal Distributors, lower than, the rates data recipients pay for comparable data feeds from ISE. The Exchange notes that other competitors maintain fees applicable to market data that are considerably higher than those proposed by the Exchange, including NYSE Arca, Inc. (''NYSE Arca'').[22] However, the Exchange has focused its comparison on ISE because it is the closest market in terms of market share and offers market data at prices lower than several other incumbent exchanges. The fees for the Nasdaq ISE Top Quote Feed, which like ToM, includes top of book, trades, and security status messages, consists of an internal distributor access fee of $3,000 per month (50% higher than the Exchange's proposed rate), and an external distributor access fee of $3,000 per month (equal to the Exchange's proposed rate).[23] ISE's overall charge to receive the Nasdaq ISE Top Quote Feed may be even higher than the Exchange's proposed rates because ISE charges additional per controlled device fees that can cause the distribution fee to reach up to $5,000 per month.[24] The Exchange's proposed rates do not include additional fees.

cToM

The proposed fees for cToM are comparable to the fees currently in place for competing options exchanges, particularly NYSE American, LLC (''NYSE American'').[25] As noted above, for the month of November 2022, the Exchange had 3.11% of the total equity

[18] *See* MIAX website, Market Data & Offerings, *available at https://www.miaxoptions.com/market-data-offerings* (last visited April 11, 2023). In general, MOR provides real-time ultra-low latency updates on the following information: new Simple Orders added to the MIAX Emerald Order Book; updates to Simple Orders resting on the MIAX Emerald Order Book; new Complex Orders added to the Strategy Book (*i.e.,* the book of Complex Orders); updates to Complex Orders resting on the Strategy Book; MIAX Emerald listed series updates; MIAX Emerald Complex Strategy definitions; the state of the MIAX Emerald System; and MIAX Emerald's underlying trading state.

[19] The Exchange notes that it receives complex market data for all U.S. options exchanges that offer complex functionality from direct feeds from The Options Price Reporting Authority (''OPRA'').

[20] *See* ISE Options 7 Pricing Schedule, Section 10, H., *available at https://listingcenter.nasdaq.com/rulebook/ise/rules/ISE%20Options%207* (assessing Professional internal and external distributors $3,000 per month, plus $20 per month per controlled device for ISE's Top Quote Feed).

[21] *See* Market at a Glance, U.S. Options Market Volume Summary, *available at https://www.miaxoptions.com/* (last visited April 11, 2023).

[22] Fees for the NYSE Arca Options Top Feed, which is the comparable product to ToM, are $3,000 per month for access (internal use) and an additional $2,000 per month for redistribution (external distribution), compared to the Exchange's proposed fees of $2,000 and $3,000 for Internal and External Distributors, respectively. In addition, for its NYSE Arca Options Top Feed, NYSE Arca charges for three different categories of non-display usage, and user fees, both of which the Exchange does not propose to charge, causing the overall cost of NYSE Arca Options Top Feed to far exceed the Exchange's proposed rates. *See* NYSE Acra Options Proprietary Market Data Fees, *available at: https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Options_Proprietary_Data_Fee_Schedule.pdf.*

[23] *See supra* note 20.

[24] *Id.*

[25] *See* NYSE American Options Proprietary Market Data Fees, *available at https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Options_Market_Data_Fee_Schedule.pdf.*

options market share and 3.03% of the total electronic complex non-index volume executed on exchanges offering electronic complex functionality. For that same month, NYSE American had 6.93% of the total equity options market share and 6.35% of the total electronic complex non-index volume.[26] The Exchange proposes fees for cToM that are comparable to the rates data recipients pay for comparable data feeds from NYSE American. The Exchange has focused its comparison on NYSE American because it is the closest market in terms of market share. The fees for the NYSE American Options Complex, which, like cToM, includes top of book, trades, and security status messages for complex orders, consists of an internal distributor access fee of $1,500 per month (slightly lower than the Exchange's proposed rate), and an external distributor access fee of $1,000 per month (resulting in a total external distribution fee of $2,500 per month).[27] However, NYSE American's overall charge to receive NYSE American Options Complex data may be even higher than the Exchange's proposed rates because NYSE American charges additional non-displayed usage fees (each are $1,000 per month and a subscriber may pay multiple non-displayed usage fees), per user fees ($20 per month for professional users and $1.00 per month for non-professional users), and multiple data feed fees ($200 per month), all of which the Exchange does not propose to charge. These additional charges by NYSE American can cause the total cost to receive NYSE American Complex data to far exceed the rates that the Exchange proposes to charge.

Additional Discussion—Cost Analysis

In general, the Exchange believes that exchanges, in setting fees of all types, should meet high standards of transparency to demonstrate why each new fee or fee increase meets the Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. In particular, the Exchange believes that each exchange should take extra care to be able to demonstrate that these fees are based on its costs and reasonable business needs.

Accordingly, in proposing to charge fees for market data, the Exchange is especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and in carefully and transparently assessing the impact on Members—both generally and in relation to other Members—to ensure the fees will not create a financial burden on any participant and will not have an undue impact in particular on smaller Members and competition among Members in general. The Exchange does not believe it needs to otherwise address questions about market competition in the context of this filing because the proposed fees are so clearly consistent with the Act based on its Cost Analysis. The Exchange also believes that this level of diligence and transparency is called for by the requirements of Section 19(b)(1) under the Act,[28] and Rule 19b–4 thereunder,[29] with respect to the types of information self-regulatory organizations (''SROs'') should provide when filing fee changes, and Section 6(b) of the Act,[30] which requires, among other things, that exchange fees be reasonable and equitably allocated,[31] not designed to permit unfair discrimination,[32] and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[33] This rule change proposal addresses those requirements, and the analysis and data in this section are designed to clearly and comprehensively show how they are met.[34]

As noted above, the Exchange has conducted and recently updated a study of its aggregate costs to produce the ToM and cToM data feeds—the Cost Analysis.[35] The Cost Analysis required a detailed analysis of the Exchange's aggregate baseline costs, including a determination and allocation of costs for core services provided by the Exchange—transactions, market data, membership services, physical connectivity, and ports (which provide order entry, cancellation and modification functionality, risk functionality, ability to receive drop copies, and other functionality). The Exchange separately divided its costs between those costs necessary to deliver each of these core services, including infrastructure, software, human resources (*i.e.,* personnel), and certain general and administrative expenses (collectively, ''cost drivers'').

As an initial step, the Exchange determined the total cost for the Exchange and the affiliated markets. That total cost was then divided among the Exchange and each of its affiliated markets based on a number of factors, including server counts, additional hardware and software utilization, current or anticipated functional or non-functional development projects, capacity needs, end-of-life or end-of-service intervals, number of members, market model (*e.g.,* price time or pro-rata), which may impact message traffic, individual system architectures that impact platform size,[36] storage needs, dedicated infrastructure versus shared infrastructure allocated per platform based on the resources required to support each platform, number of available connections, and employees allocated time. This will result in different allocation percentages among the Exchange and its affiliated markets. Meanwhile this allocation methodology ensures that no portion of any cost was allocated twice or double-counted between the Exchange and its affiliated markets.

Next, the Exchange adopted an allocation methodology with thoughtful and consistently principles to guide how much of a particular cost amount allocated to the Exchange pursuant to the above methodology should be allocated within the Exchange to each core service. For instance, fixed costs that are not driven by client activity (*e.g.,* message rates), such as data center costs, were allocated more heavily to the provision of physical connectivity (61.9% of total expense amount allocated), with smaller allocations to additional Limited Service MEI Ports (8.8%), and the remainder to the provision of membership services, transaction execution and market data

[26] *See* supra note 21.

[27] *Id.*

[28] 15 U.S.C. 78s(b)(1).

[29] 17 CFR 240.19b–4.

[30] 15 U.S.C. 78f(b).

[31] 15 U.S.C. 78f(b)(4).

[32] 15 U.S.C. 78f(b)(5).

[33] 15 U.S.C. 78f(b)(8).

[34] In 2019, Commission staff published guidance suggesting the types of information that SROs may use to demonstrate that their fee filings comply with the standards of the Exchange Act (''Fee Guidance''). While the Exchange understands that the Fee Guidance does not create new legal obligations on SROs, the Fee Guidance is consistent with the Exchange's view about the type and level of transparency that exchanges should meet to demonstrate compliance with their existing obligations when they seek to charge new fees. *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019) *available at https://www.sec.gov/tm/staff-guidancesro-rule-filings-fees.*

[35] The Exchange notes that its Cost Analysis is based on that conducted by MEMX, LLC (''MEMX''). *See* Securities Exchange Act Release Nos. 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26); *and* 96430 (December 1, 2022), 87 FR 75083 (December 7, 2022) (SR–MEMX–2022–32). The Exchange notes that the percentage allocations and cost levels are based on the Exchange's 2023 estimated budget and may differ from those provided by MEMX for a number of reasons, including the Exchange's ability to allocate costs among multiple exchanges while MEMX allocates cost to a single exchange.

[36] For example, the Exchange maintains 12 matching engines, MIAX Pearl Options maintains 12 matching engines, MIAX Pearl Equities maintains 24 matching engines, and MIAX maintains 24 matching engines.

services (29.3%). This next level of the allocation methodology at the individual exchange level also took into account a number of factors similar to those set forth under the first allocation methodology described above, to determine the appropriate allocation to connectivity or market data versus what is to be allocated to providing other services. The allocation methodology was developed through an assessment of costs with senior management intimately familiar with each area of the Exchange's operations. After adopting this allocation methodology, the Exchange then applied an estimated allocation of each Cost Driver to each core service, resulting in the cost allocations described below. Each of the below cost allocations is unique to the Exchange and represents a percentage of overall cost that was allocated to the Exchange pursuant to the initial allocation described above.

By allocating segmented costs to each core service, the Exchange was able to estimate by core service the potential margin it might earn based on different fee models. The Exchange notes that as a non-listing venue it has five primary sources of revenue that it can potentially use to fund its operations: transaction, access, membership, regulatory, and market data fees. Accordingly, the Exchange generally must cover its expenses from these four primary sources of revenue. The Exchange also notes that as a general matter each of these sources of revenue is based on services that are interdependent. For instance, the Exchange's system for executing transactions is dependent on physical hardware and connectivity; only Members and parties that they sponsor to participate directly on the Exchange may submit orders to the Exchange; many Members (but not all) consume market data from the Exchange in order to trade on the Exchange; and, the Exchange consumes market data from external sources in order to comply with regulatory obligations. Accordingly, given this interdependence, the allocation of costs to each service or revenue source required judgment of the Exchange and was weighted based on estimates of the Exchange that the Exchange believes are reasonable, as set forth below. While there is no standardized and generally accepted methodology for the allocation of an exchange's costs, the Exchange's methodology is the result of an extensive review and analysis and will be consistently applied going forward for any other potential fee proposals. In the absence of the Commission attempting to specify a methodology for the allocation of exchanges' interdependent costs, the Exchange will continue to be left with its best efforts to attempt to conduct such an allocation in a thoughtful and reasonable manner.

Through the Exchange's extensive Cost Analysis, which was again recently updated to focus solely on the provision of ToM and cToM data feeds, the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of ToM and cToM data feeds, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of ToM and cToM data feeds, and thus bears a relationship that is, ''in nature and closeness,'' directly related to ToM and cToM data feeds. Based on its analysis, the Exchange calculated its aggregate annual costs for providing the ToM and cToM data feeds to be $665,296. This results in an estimated monthly cost for providing ToM and cToM data feeds of $55,441 (rounded to the nearest dollar when dividing the aggregate annual cost by 12 months). In order to cover operating costs and earn a reasonable profit on its market data, the Exchange has determined it necessary to charge fees for its proprietary data products, and, as such, the Exchange is proposing to modify its Fee Schedule, as set forth above. With the proposed fee changes, the Exchange anticipates annual revenue for ToM and cToM to be $804,000 (or $67,000 per month combined).

Costs Related to Offering ToM and cToM Data Feeds

The following chart details the individual line-item (annual) costs considered by the Exchange to be related to offering the ToM and cToM data feeds to its Members and other customers, as well as the percentage of the Exchange's overall costs that such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 2.8% of its overall Human Resources cost to offering ToM and cToM data feeds).

Cost drivers	Costs	% of all
Human Resources	$354,553	2.8
Network Infrastructure (fiber connectivity)	9,428	1.7
Data Center	20,630	1.7
Hardware and Software Maintenance & Licenses	22,202	1.7
Depreciation	21,167	0.7
Allocated Shared Expenses	237,316	3.0
Total	665,296	2.5

Human Resources

For personnel costs (Human Resources), the Exchange calculated an allocation of employee time for employees whose functions include directly providing services necessary to offer the ToM and cToM data feeds, including performance thereof, as well as personnel with ancillary functions related to establishing and providing such services (such as information security and finance personnel). The Exchange notes that it and its affiliated markets have approximately 184 employees (excluding employees at non-options exchange subsidiaries of Miami International Holdings, Inc. (''MIH''), the holding company of the Exchange and its affiliates, MIAX Pearl and MIAX), and each department leader has direct knowledge of the time spent by each employee with respect to the various tasks necessary to operate the Exchange. Specifically, twice a year and as needed with additional new hires and new project initiatives, in consultation with employees as needed, managers and department heads assign a percentage of time to every employee and then allocate that time amongst the Exchange and its affiliated markets to determine that market's individual Human Resources expense. Then, again managers and department heads assign a percentage of each employee's time allocated to the Exchange into buckets including network connectivity, ports, market data, and other exchange services. This process ensures that every employee is 100% allocated, ensuring there is no double counting between the Exchange and its affiliated markets.

The estimates of Human Resources cost were therefore determined by consulting with such department leaders, determining which employees are involved in tasks related to providing the ToM and cToM data feeds, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of their time such employees devote to tasks related to providing the ToM and cToM data feeds. The Exchange notes that senior level executives were allocated Human Resources costs to the extent the Exchange believed they are involved in overseeing tasks related to providing the ToM and cToM data feeds. The Exchange's cost allocation for employees who perform work in support of generating and disseminating the ToM and cToM data feeds on behalf of the Exchange's options trading platform arrived at a full time equivalent (''FTE'') of 1.2 FTEs. This includes personnel from the following Exchange departments that are predominately involved in producing Exchange market data: Business Systems Development, Trading Systems Development, Systems Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. The Human Resources cost was calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Network Infrastructure

The Network Infrastructure cost includes cabling and switches required to generate and disseminate the ToM and cToM data feeds. The Network Infrastructure cost was narrowly estimated by focusing on the servers used at the Exchange's primary and back-up data centers specifically for the ToM and cToM data feeds. Further, as certain servers are only partially utilized to generate and disseminate the ToM and cToM data feeds, only the percentage of such servers devoted to generating and disseminating the ToM and cToM data feeds was included (*i.e.,* the capacity of such servers allocated to the ToM and cToM data feeds).[37]

Data Center

The Exchange does not own the primary data center or the secondary data center, but instead leases space in data centers operated by third parties where the Exchange houses servers, switches and related equipment. Data Center costs include an allocation of the costs the Exchange incurs to provide the ToM and cToM data feeds in the third-party data centers where the Exchange maintains its equipment, as well as related costs. As the Data Center costs are primarily for space, power, and cooling of servers, the Exchange allocated 1.7% to the applicable Data Center costs for the ToM and cToM data feeds. The Exchange believes it is reasonable to apply the same proportionate percentage of Data Center costs to that of Network Infrastructure.

Hardware and Software Maintenance and Licenses

Hardware and Software Maintenance and Licenses includes those licenses used to operate and monitor physical assets necessary to offer the ToM and cToM data feeds. Because the hardware and software license fees are correlated to the servers used by the Exchange, the Exchange again applied an allocation of 1.7% of its costs for Hardware and Software Maintenance and Licenses to the ToM and cToM data feeds.[38]

Monthly Depreciation

The vast majority of the hardware and software the Exchange uses with respect to its operations, including the software used to generate and disseminate the ToM and cToM data feeds has been developed in-house and the cost of such development is depreciated over time. Accordingly, the Exchange included Depreciation costs related to depreciated hardware and software used to generate and disseminate the ToM and cToM data feeds. The Exchange also included in the Depreciation costs certain budgeted improvements that the Exchange intends to capitalize and depreciate with respect to the ToM and cToM data feeds in the near-term. As with the other allocated costs in the Exchange's updated Cost Analysis, the Depreciation cost was therefore narrowly tailored to depreciation related to the ToM and cToM data feeds. The Exchange also notes that this allocation differs from its affiliated markets due to a number of factors, such as the age of physical assets and software (*e.g.,* older physical assets and software were previously depreciated and removed from the allocation), or certain system enhancements that required new physical assets and software, thus providing a higher contribution to the depreciated cost.

Allocated Shared Expenses

Finally, certain general shared expenses were allocated to the ToM and cToM data feeds. However, contrary to its prior cost analysis, rather than taking the whole amount of general shared expenses and applying an allocated percentage, the Exchange has narrowly selected specific general shared expenses relevant to the cToM data feed. The costs included in general shared expenses allocated to the ToM and cToM data feeds include office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications costs. The cost of paying individuals to serve on the Exchange's Board of Directors or any committee was not allocated to providing ToM and cToM data feeds.

Cost Analysis—Additional Discussion

In conducting its Cost Analysis, the Exchange did not allocate any of its expenses in full to any core service and did not double-count any expenses. Instead, as described above, the Exchange identified and allocated applicable Cost Drivers across its core services and used the same approach to analyzing costs to form the basis of separate proposals to amend fees for connectivity and port services[39] and this filing proposing fees for ToM and cToM. Thus, the Exchange's allocations of cost across core services were based on real costs of operating the Exchange and were not double-counted across the core services or their associated revenue streams. The proposed fees for ToM and cToM data feeds are designed to permit the Exchange to cover the costs allocated to providing cToM data with a mark-up that the Exchange believes is

[37] The Exchange understands that the Investors Exchange, Inc. (''IEX'') and MEMX both allocated a percentage of their servers to the production and dissemination of market data to support proposed market data fees. *See* Securities Exchange Act Release No. 94630 (April 7, 2022), 87 FR 21945, at page 21949 (April 13, 2022) (SR–IEX–2022–02). *See also supra* note 35. The Exchange does not have insight into either MEMX's or IEX's technology infrastructure or what their determinations were based on. However, the Exchange reviewed its own technology infrastructure and believes based on its design, it is more appropriate for the Exchange to allocate a portion of its network infrastructure cost to market data based on a percentage of overall cost, not on a per server basis.

[38] This expense may be less than the Exchange's affiliated markets, specifically MIAX Pearl, because, unlike the Exchange, MIAX Pearl (the options and equities markets) maintains an additional gateway to accommodate its member's access and connectivity needs. This added gateway contributes to the difference in allocations between the Exchange and MIAX Pearl.

[39] *See* MIAX Exchange Group Alert, ''MIAX Options, Pearl Options and Emerald Options Exchanges—January 1, 2023 Non-Transaction Fee Changes,'' issued December 9, 2022, *available at https://www.miaxoptions.com/alerts/2022/12/09/miax-options-pearl-options-and-emerald-options-exchanges-january-1-2023-non-0.*

modest (approximately 17%, which could decrease over time [40]), which the Exchange believes is fair and reasonable after taking into account the costs related to creating, generating, and disseminating the ToM and cToM data feeds and the fact that the Exchange will need to fund future expenditures (increased costs, improvements, etc.). The Exchange also reiterates that prior to July of 2021, the month in which it first proposed to adopt fees for cToM, the Exchange has not previously charged any fees for cToM and its allocation of costs to cToM was part of a holistic allocation that also allocated costs to other core services without double-counting any expenses.

The Exchange is owned by a holding company that is the parent company of four exchange markets and, therefore, the Exchange and its affiliated markets must allocate shared costs across all of those markets accordingly, pursuant to the above-described allocation methodology. In contrast, the Investors Exchange LLC (''IEX'') and MEMX, which are currently each operating only one exchange, in their recent non-transaction fee filings can allocate the entire amount of that same cost to a single exchange. This can result in lower profit margins for the non-transaction fees proposed by IEX and MEMX because the single allocated cost does not experience the efficiencies and synergies associated with shared costs across multiple platforms.[41] The Exchange and its affiliated markets must share a single cost, which results in cost efficiencies that cause a broader gap between the allocated cost amount and projected revenue, even though the fee levels being proposed are lower or similar to competing markets (as described above). To the extent that the application of a cost-based standard results in Commission Staff making determinations as to the appropriateness of certain profit margins, the Commission Staff must consider whether the proposed fee level is comparable to, or on parity with, the same fee charged by competing exchanges and how different cost allocation methodologies (such as across multiple markets) may result in different profit margins for comparable fee levels. If it is the case that the Commission Staff is making determinations as to appropriate profit margins, the Exchange believes that Staff should be clear to all market participants as to what they determine is an appropriate profit margin and should apply such determinations consistently and, in the case of certain legacy exchanges, retroactively, if such standards are to avoid having a discriminatory effect.

Further, the proposal reflects the Exchange's efforts to control its costs, which the Exchange does on an ongoing basis as a matter of good business practice. A potential profit margin should not be judged alone based on its size, but is also indicative of costs management and whether the ultimate fee reflects the value of the services provided. For example, a profit margin on one exchange should not be deemed excessive where that exchange has been successful in controlling its costs, but not excessive where on another exchange where that exchange is charging comparable fees but has a lower profit margin due to higher costs. Doing so could have the perverse effect of not incentivizing cost control where higher costs alone could be used to justify fees increases.

Accordingly, while the Exchange believes in transparency around costs and potential margins, as well as periodic review of revenues and applicable costs (as discussed below), the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning supra-competitive profits, and the Exchange believes the Cost Analysis and related projections demonstrate this fact.

The Exchange notes that the Cost Analysis is based on the Exchange's 2023 fiscal year of operations and projections. It is possible, however, that such costs will either decrease or increase. To the extent the Exchange sees growth in use of ToM and cToM data feeds it will receive additional revenue to offset future cost increases. However, if use of ToM and cToM data feeds is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs.

Similarly, the Exchange expects that it would propose to decrease fees in the event that revenue materially exceeds current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (*e.g.,* to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and expects that it would propose to increase fees in the event that revenues fail to cover its costs and a reasonable mark-up, or decrease fees in the event that revenue or the mark-up materially exceeds current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, the Exchange believes that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

Implementation

The proposed rule changes will be immediately effective.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) [42] of the Act in general, and furthers the objectives of Section 6(b)(4) [43] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. Additionally, the Exchange believes that the proposed fees are consistent with the objectives of Section 6(b)(5) [44] of the Act in that they are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to

[40] The Exchange believes that its profit margins could decrease if U.S. inflation continues at its current rate. *See, e.g., https://www.usinflationcalculator.com/inflation/current-inflation-rates/* (last visited April 11, 2023).

[41] The Exchange acknowledges that IEX included in its proposal to adopt market data fees after offering market data for free an analysis of what its projected revenue would be if all of its existing customers continued to subscribe versus what its projected revenue would be if a limited number of customers subscribed due to the new fees. *See* Securities Exchange Act Release No. 94630 (April 7, 2022), 87 FR 21945 (April 13, 2022) (SR–IEX–2022–02). MEMX did not include a similar analysis in either of its recent non-transaction fee proposals. *See, e.g., supra* note 35. The Exchange does not believe a similar analysis would be useful here because it is amending existing fees, not proposing to charge a new fee where existing subscribers may terminate connections because they are no longer enjoying the service at no cost.

[42] 15 U.S.C. 78f.

[43] 15 U.S.C. 78f(b)(4).

[44] 15 U.S.C. 78f(b)(5).

a free and open market and national market system, and, in general, to protect investors and the public interest, and, particularly, are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange notes prior to addressing the specific reasons the Exchange believes the proposed fees and fee structure are reasonable, equitably allocated and not unreasonably discriminatory, that the proposed fees are consistent with the fee amounts charged by competing U.S. securities exchanges. For this reason, the Exchange believes that the proposed fees are consistent with the Act generally, and Section 6(b)(5) [45] of the Act in particular.

As noted above, in the four years since the Exchange launched operations with Complex Order functionality, the Exchange has grown its monthly complex market share from 0% to 3.03% of the total electronic complex non-index volume executed on U.S. options exchanges offering complex functionality for the month of November 2022.[46] One of the primary objectives of the Exchange is to provide competition and to reduce fixed costs imposed upon the industry. Consistent with this objective, the Exchange believes that this proposal reflects a simple, competitive, reasonable, and equitable pricing structure.

Reasonableness

Overall. With regard to reasonableness, the Exchange understands that the Commission has traditionally taken a market-based approach to examine whether the SRO making the fee proposal was subject to significant competitive forces in setting the terms of the proposal. The Exchange understands that in general the analysis considers whether the SRO has demonstrated in its filing that (i) there are reasonable substitutes for the product or service; (ii) ''platform'' competition constrains the ability to set the fee; and/or (iii) revenue and cost analysis shows the fee would not result in the SRO taking supra-competitive profits. If the SRO demonstrates that the fee is subject to significant competitive forces, the Exchange understands that in general the analysis will next consider whether there is any substantial countervailing basis to suggest the fee's terms fail to meet one or more standards under the Exchange Act. The Exchange further understands that if the filing fails to demonstrate that the fee is constrained by competitive forces, the SRO must provide a substantial basis, other than competition, to show that it is consistent with the Exchange Act, which may include production of relevant revenue and cost data pertaining to the product or service.

The Exchange has not determined its proposed overall market data fees based on assumptions about market competition, instead relying upon a cost-plus model to determine a reasonable fee structure that is informed by the Exchange's understanding of different uses of the products by different types of participants. In this context, the Exchange believes the proposed fees overall are fair and reasonable as a form of cost recovery plus the possibility of a reasonable return for the Exchange's aggregate costs of offering the ToM and cToM data feeds. The Exchange believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup some or all of Exchange's annual costs of providing ToM and cToM data with a reasonable mark-up. As discussed in the Purpose section, the Exchange estimates this fee filing will result in annual revenue of approximately $804,000, representing a potential mark-up of just 17% over the cost of providing ToM and cToM data. Accordingly, the Exchange believes that this fee methodology is reasonable because it allows the Exchange to recoup some or all of its expenses for providing the ToM and cToM data products (with any additional revenue representing no more than what the Exchange believes to be a reasonable rate of return). The Exchange also believes that the proposed fees are reasonable because they are generally less than the fees charged by competing options exchanges for comparable market data products, notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of market data.

The Exchange believes the proposed fees for the ToM and cToM data feeds are reasonable when compared to fees for comparable products, compared to which the Exchange's proposed fees are generally lower, as well as other comparable data feeds priced significantly higher than the Exchange's proposed fees for the ToM and cToM data feeds.[47]

Internal Distribution Fees. The Exchange believes that it is reasonable to charge fees to access the ToM and cToM data feeds for Internal Distribution because of the value of such data to subscribers in their profit-generating activities. The Exchange also believes that the proposed monthly Internal Distribution fee for cToM is reasonable as it is similar to the amount charged by at least one other exchange of comparable size for comparable data products, and lower than the fees charged by other exchange for comparable data products.[48]

External Distribution Fees. The Exchange believes that it is reasonable to charge External Distribution fees for the ToM and cToM data feeds because vendors receive value from redistributing the data in their business products provided to their customers. The Exchange believes that charging External Distribution fees is reasonable because the vendors that would be charged such fees profit by re-transmitting the Exchange's market data to their customers. These fees would be charged only once per month to each vendor account that redistributes any ToM and cToM data feeds, regardless of the number of customers to which that vendor redistributes the data. For all of the foregoing reasons, the Exchange believes that the proposed fees for the ToM and cToM data feeds are reasonable.

Equitable Allocation

Overall. The Exchange believes that its proposed fees are reasonable, fair, and equitable, and not unfairly discriminatory because they are designed to align fees with services provided. The Exchange believes the proposed fees for the ToM and cToM data feeds are allocated fairly and equitably among the various categories of users of the feeds, and any differences among categories of users are justified and appropriate.

The Exchange believes that the proposed fees are equitably allocated because they will apply uniformly to all data recipients that choose to subscribe to the ToM and cToM data feeds. Any subscriber or vendor that chooses to subscribe to the ToM and cToM data feeds is subject to the same Fee Schedule, regardless of what type of business they operate, and the decision to subscribe to one or more ToM and cToM data feeds is based on objective differences in usage of ToM and cToM data feeds among different Members, which are still ultimately in the control of any particular Member. The Exchange believes the proposed pricing of the ToM and cToM data feeds is equitably allocated because it is based, in part, upon the amount of information contained in each data feed and the

[45] 15 U.S.C. 78f(b)(5).

[46] *See supra* note 21.

[47] *See supra* notes 20, 22, and 25, and accompanying text.

[48] *See, e.g., supra* notes 20, 22, and 25.

value of that information to market participants.

Internal Distribution Fees. The Exchange believes the proposed monthly fees for Internal Distribution of the ToM and cToM data feeds are equitably allocated because they would be charged on an equal basis to all data recipients that receive the ToM and cToM data feeds for internal distribution, regardless of what type of business they operate.

External Distribution Fees. The Exchange believes the proposed monthly fees for External Distribution of the ToM and cToM data feeds are equitably allocated because they would be charged on an equal basis to all data recipients that receive the ToM and cToM data feeds that choose to redistribute the feeds externally, regardless of what business they operate. The Exchange also believes that the proposed monthly fees for External Distribution are equitably allocated when compared to lower proposed fees for Internal Distribution because data recipients that are externally distributing ToM and cToM data feeds are able to monetize such distribution and spread such costs amongst multiple third party data recipients, whereas the Internal Distribution fee is applicable to use by a single data recipient (and its affiliates).

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess Internal Distributors fees that are less than the fees assessed for External Distributors for subscriptions to the ToM and cToM data feeds because Internal Distributors have limited, restricted usage rights to the market data, as compared to External Distributors, which have more expansive usage rights. All Members and non-Members that decide to receive any market data feed of the Exchange (or its affiliates, MIAX Pearl and MIAX), must first execute, among other things, the MIAX Exchange Group Exchange Data Agreement (the ''Exchange Data Agreement'').[49] Pursuant to the Exchange Data Agreement, Internal Distributors are restricted to the ''internal use'' of any market data they receive. This means that Internal Distributors may only distribute the Exchange's market data to the recipient's officers and employees and its affiliates.[50] External Distributors may distribute the Exchange's market data to persons who are not officers, employees or affiliates of the External Distributor,[51] and may charge their own fees for the redistribution of such market data. External Distributors may monetize their receipt of the ToM and cToM data feeds by charging their customers fees for receipt of the Exchange's cToM data. Internal Distributors do not have the same ability to monetize the Exchange's ToM and cToM data feeds. Accordingly, the Exchange believes it is fair, reasonable and not unfairly discriminatory to assess External Distributors a higher fee for the Exchange's ToM and cToM data feeds as External Distributors have greater usage rights to commercialize such market data and can adjust their own fee structures if necessary.

The Exchange also utilizes more resources to support External Distributors versus Internal Distributors, as External Distributors have reporting and monitoring obligations that Internal Distributors do not have, thus requiring additional time and effort of Exchange staff. For example, External Distributors have monthly reporting requirements under the Exchange's Market Data Policies.[52] Exchange staff must then, in turn, process and review information reported by External Distributors to ensure the External Distributors are redistributing cToM data in compliance with the Exchange's Market Data Agreement and Policies.

The Exchange believes the proposed cToM fees are equitable and not unfairly discriminatory because the fee level results in a reasonable and equitable allocation of fees amongst subscribers for similar services, depending on whether the subscriber is an Internal or External Distributor. Moreover, the decision as to whether or not to purchase market data is entirely optional to all market participants. Potential purchasers are not required to purchase the market data, and the Exchange is not required to make the market data available. Purchasers may request the data at any time or may decline to purchase such data. The allocation of fees among users is fair and reasonable because, if market participants decide not to subscribe to the data feed, firms can discontinue their use of the cToM data. For all of the foregoing reasons, the Exchange believes that the proposed fees for the ToM and cToM data feeds are equitably allocated.

The Proposed Fees Are Not Unfairly Discriminatory

The Exchange believes the proposed fees for the ToM and cToM data feeds are not unfairly discriminatory because any differences in the application of the fees are based on meaningful distinctions between customers, and those meaningful distinctions are not unfairly discriminatory between customers.

Overall. The Exchange believes that the proposed fees are not unfairly discriminatory because they would apply to all data recipients that choose to subscribe to the same ToM and cToM data feeds. Any vendor or subscriber that chooses to subscribe to the ToM and cToM data feeds is subject to the same Fee Schedule, regardless of what type of business they operate. In sum, each vendor or subscriber has the ability to choose the best business solution for itself. The Exchange does not believe it is unfairly discriminatory to base pricing upon the amount of information contained in each data feed and the value of that information to market participants.

Internal Distribution Fees. The Exchange believes the proposed monthly fees for Internal Distribution of the ToM and cToM data feeds are not unfairly discriminatory because they would be charged on an equal basis to all data recipients that receive the same ToM and cToM data feeds for internal distribution, regardless of what type of business they operate.

External Distribution Fees. The Exchange believes the proposed monthly fees for redistributing the ToM and cToM data feeds are not unfairly discriminatory because they would be charged on an equal basis to all data recipients that receive the same ToM and cToM data feeds that choose to redistribute the feed(s) externally. The Exchange also believes that having higher monthly fees for External Distribution than Internal Distribution is not unfairly discriminatory because data recipients that are externally distributing ToM and cToM data feeds are able to monetize such distribution and spread such costs amongst multiple third party data recipients, whereas the Internal Distribution fee is applicable to use by a single data recipient (and its affiliates). For all of the foregoing reasons, the Exchange believes that the proposed fees for the Exchange Data Feeds are not unfairly discriminatory.

[49] *See* Exchange Data Agreement, *available at https://miaxweb2.pairsite.com/sites/default/files/page-files/MIAX_Exchange_Group_Data_Agreement_09032020.pdf.*

[50] *See id.*

[51] *See id.*

[52] *See* Section 6 of the Exchange's Market Data Policies, *available at https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Exchange_Group_Market_Data_Policies_07202021.pdf.*

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[53] the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange does not believe that the proposed fees place certain market participants at a relative disadvantage to other market participants because, as noted above, the proposed fees are associated with usage of the data feed by each market participant based on whether the market participant internally or externally distributes the Exchange data, which are still ultimately in the control of any particular Member, and such fees do not impose a barrier to entry to smaller participants. Accordingly, the proposed fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed fees reflects the types of data consumed by various market participants and their usage thereof.

Inter-Market Competition

The Exchange does not believe the proposed fees place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, market participants are not forced to subscribe to either data feed, as described above. Additionally, other exchanges have similar market data fees with comparable rates in place for their participants.[54] The proposed fees are based on actual costs and are designed to enable the Exchange to recoup its applicable costs with the possibility of a reasonable profit on its investment as described in the Purpose and Statutory Basis sections. Competing exchanges are free to adopt comparable fee structures subject to the Commission's rule filing process. Allowing the Exchange, or any new market entrant, to waive fees (as the Exchange did for cToM) for a period of time to allow it to become established encourages market entry and thereby ultimately promotes competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[53] 15 U.S.C. 78f(b)(8).

[54] *See supra* notes 20, 22, and 25, and accompanying text.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[55] and Rule 19b–4(f)(2) [56] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EMERALD–2023–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–EMERALD–2023–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–EMERALD–2023–10 and should be submitted on or before May 16, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[57]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08649 Filed 4–24–23; 8:45 am]

BILLING CODE 8011–01–P

[55] 15 U.S.C. 78s(b)(3)(A)(ii).

[56] 17 CFR 240.19b–4(f)(2).

[57] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34891; File No. 812–15374]

Hamilton Lane Private Assets Fund, et al.

April 19, 2023.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of application for an order (''Order'') under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

Summary of Application: Applicants request an order to amend a previous order granted by the Commission that permits certain business development companies (''BDCs'') and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

Applicants: Hamilton Lane Private Assets Fund, Hamilton Lane Advisors, L.L.C., 2020 Tactical Market Fund LP, Astro Master Fund III, LP, Dragon HL, L.P., DPE Investments Holdings LP, Edgewood Partners LP, Edgewood Partners II LP, Edgewood Partners III LP, Fifth Stockholm CI SPV L.P., Finance Street AIV Splitter L.P., Florida Growth Fund II LLC, Green Core Fund, L.P.,

Hamilton Lane Capital Tower Fund LP, Hamilton Lane Co-Investment Fund IV Holdings LP, Hamilton Lane Co-Investment Fund IV Holdings-2 LP, Hamilton Lane Equity Opportunities Fund V Holding LP, Hamilton Lane Equity Opportunities Fund V Holding-2 LP, Hamilton Lane Infrastructure Fund Holdings LP, Hamilton Lane Infrastructure Fund Holdings-2 LP, Hamilton Lane NM Fund I LP, Hamilton Lane Private Equity Fund X Holdings LP, Hamilton Lane Private Markets Opportunity Fund LP, Credit Series, Hamilton Lane Private Markets Opportunity Fund LP, Fund-Of-Funds Series, Hamilton Lane Private Markets Opportunity Fund LP, Fund-Of-Funds Series II, Hamilton Lane—Raytheon Technologies Pension Emerging Managers, L.P., Hamilton Lane Secondary Fund V International Series Fund LP, Series 2, Hamilton Lane SMID II Holdings LP, Hamilton Lane Strategic Opportunities Fund V (Series 2019) Holdings LP, Hamilton Lane Strategic Opportunities Fund VI (Series 2020) Holdings LP, Hamilton Lane Strategic Opportunities Fund VII Holdings LP, Hamilton Lane Strategic Opportunities Fund VIII Holdings LP, Hamilton Lane Venture Access Fund I Holdings LP, Hamilton Lane Venture Capital Fund LP, Series 2020, Hamilton Lane Venture Capital Fund LP, Series 2021, Hamilton Lane Venture Capital Fund LP, Series 2022, Hamilton Lane-Carpenters Partnership Fund V L.P., HL International Investors LP, Series H2, HL–HP Global Investments LP, HLSF IV Holdings LP, HLSF V Holdings LP, HLSF VI Holdings LP, HLSF VI Holdings 2 LP, Nakhoda Lane Fund L.P., Nakhoda Lane Fund DE SPV LP, SRCS HL PE 1 (Master) LP, Hamilton Lane/NYSCRF Israel Investment Fund L.P., Hamilton Lane/NYSCRF Israel Investment Fund II L.P., HL Advanced Sustainable Total Return Opportunities Fund III, HL ENPAM Fund Splitter LP, HL Environmental Fund LP, HL Impact Holdings LP, HL Impact II Holdings LP, HL International Investors L.P. Series M, HL International Investors L.P. Series N, HL International Investors L.P. Series O, HL International Investors L.P. Series Q, HL International Investors LP Series I, HL International Investors LP, HL Secondary Opportunities 2018 Series, HL International Investors LP, Series H1, HL International Investors, L.P. Series P, HL Large Buyout Club Fund V, HL Large Buyout Club Fund VI, HL MIRAS Secondary Fund LP, HL P Plus ESG Co-Invest Fund I LP, HL Pennsylvania Co-Investment Fund, L.P., HL Private Assets Holdings LP, HL Real Estate Asset Opportunities—A Master Fund LP, HL Venture Capital Club Fund, HL/AS Global Coinvest LP, Hudson River Co-Investment Fund III L.P., Innovation Lane LP, JATI Private Equity Fund III L.P., KPI-Hamilton Lane Multi-Strategy Fund I Master LP, KPS-Hamilton Lane Multi-Strategy Fund I Master LP, KTCU HL Infrastructure Master Fund LP, Libra Taurus PE Fund Master LP, Moran Real Asset Fund II, L.P., Moran Real Asset Fund III, L.P., New York Credit Co-Investment Fund II LP, New York Credit SBIC Fund L.P., PENHA Fund I L.P., PENHA Fund II L.P., Phoenix HL L.P., RAPM NM Secondary Opportunity Fund, L.P., RIHL Direct Credit Fund LP, Russell Investments HL Private Markets Co-Investment Master Fund LP, Russell Investments HL Private Markets Secondary Master Fund LP, Sixth Stockholm CI–SPV LP, Smart Clean Air and Energy Fund LP, SRE HL PE 1 (Master) LP, SREH HL PE 1 (Master) LP, SRZ HL PE 1 (Master) LP, Tarragon Master Fund LP, Tower Bridge Select Opportunities—A Master Fund LP, TTCPFS HL Investments Splitter AIV Fund LP, Utah Real Assets Portfolio, LP, WPP HL Credit Opportunities Fund LP.

Filing Dates: The application was filed on July 26, 2022, and amended on January 25, 2023.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on May 15, 2023, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Joshua B. Derringer, Esq., Faegre, Drinker, Biddle & Reath LLP, at *Joshua.Deringer@faegredrinker.com.*

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, or Kyle R. Ahlgren, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' first amended and restated application, dated January 25, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08652 Filed 4–24–23; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 12060]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: "Young Picasso in Paris" Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Young Picasso in Paris'' at the Solomon R. Guggenheim Museum, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order

12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Scott Weinhold,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–08699 Filed 4–24–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12061]

Notice of the Program for the Study of Eastern Europe and Eurasia (Title VIII) Advisory Committee Open Virtual Meeting

ACTION: Notice of an advisory committee open meeting.

SUMMARY: Pursuant to section 10 of the Federal Advisory Committee Act (FACA), notice is hereby given to announce a public virtual meeting of the Title VIII Advisory Committee on Friday, June 30, 2023.

DATES: The meeting will begin at approximately 1:30 p.m. Eastern Daylight Time (EDT) on Friday, June 30, 2023.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, Mr. Robert Zimmerman, telephone number 202–258–8024, Title VIII Program Officer, Department of State, Bureau of Intelligence and Research, *TitleVIII@state.gov*.

SUPPLEMENTARY INFORMATION: All meeting participants are being asked to RSVP by Wednesday, June 28, 2023, via email to *TitleVIII@state.gov,* subject line ''Title VIII Advisory Committee Public Meeting 2023.'' Members of the public requesting reasonable accommodation should make such requests when they register. Upon receipt of the RSVP, attendees will be registered, and will receive instructions for accessing the meeting, including the meeting number and any password. It is anticipated that the meeting will be held either via Google Meet or Zoom for Government. Members of the public who will participate are encouraged to logon 10 minutes prior to the start of the meeting.

Purpose of Meeting and Topics To Be Discussed: The Advisory Committee will announce its recommendations for grant recipients for the 2023 funding opportunity for the Program for the Study of Eastern Europe and the Independent States of the Former Soviet Union, in accordance with the Research and Training for Eastern Europe and the Independent States of the Former Soviet Union Act of 1983, Public Law 98–164, as amended. The agenda will include opening statements by the Committee chair and Committee members. The Committee will provide an overview and discussion of eligible grant proposals submitted from U.S organizations with an interest and expertise in conducting research and foreign language training concerning the countries and languages of Eastern Europe and the Independent States of the Former Soviet Union, based on the guidelines set forth in the March 25, 2023, request for proposals published on *Grants.gov* and SAMS Domestic (*mygrants.service-now.com*). Following Committee deliberation, interested members of the public may make oral statements concerning the Title VIII program. This meeting will be open to the public; however, attendees must register in advance.

Robert A. Zimmerman,

Designated Federal Officer, Advisory Committee for the Program for the Study of Eastern Europe and the Independent States of the Former Soviet Union, Department of State.

[FR Doc. 2023–08722 Filed 4–24–23; 8:45 am]

BILLING CODE 4710–32–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2023–0011]

Request for Information Regarding Uses for Used Creosote-Treated Railroad Ties

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Request for information (RFI).

SUMMARY: The Federal Railroad Administration is seeking information on potential uses and options for disposal or repurposing used creosote-treated railroad ties (CTRTs), which are the wooden rail crossties that support the rail track. Every year, approximately 23 million CTRTs are replaced along the nation's rail network. Because a number of FRA's grant programs fund rail infrastructure projects, which may include the replacement of worn CTRTs, understanding the options to dispose of CTRTs will assist FRA and its grantees from the implementation of FRA's grant programs and assessing the impacts of such disposition (*e.g.,* life-cycle maintenance impacts). Depending on the responses, FRA may develop a best practices document for rail tie disposal.

DATES: Written comments on this RFI must be received on or before June 26, 2023. FRA will consider comments filed after this date to the extent practicable in the development of any potential best practices.

ADDRESSES: *Comments:* Comments should refer to docket number FRA–2023–0011 and be submitted at *https://www.regulations.gov*. Search by using the docket number and follow the instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number (FRA–2023–0011) for this RFI. Please note that comments submitted online via *www.regulations.gov* are not immediately posted to the docket. Several business days may elapse after a comment has been submitted online before it is posted to the docket.

Privacy Act: DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy*. To facilitate comment tracking and response, commenters are encouraged to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Docket: For access to the docket to read comments received, please visit *https://www.regulations.gov* and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: For further information related to this RFI, please contact Michael Johnsen, Senior Advisor for Climate and Sustainability, Office of Environmental Program Management, at telephone: 202–450–8540, email: *Michael.johnsen@dot.gov*.

SUPPLEMENTARY INFORMATION: Crossties support the metal rails upon which trains run and the majority of them are made of creosote-treated wood. Creosote is an oil-based preservative allowing the ties to maintain a lifespan of about 30 years. There are approximately 207,000 miles of rail track in the U.S. requiring about 620 million crossties. About 23 million crossties are replaced every

year. Traditionally, end of life disposal of CTRTs primarily involved burning in waste-to-energy (or energy conversion) facilities to produce electricity. However, recent changes in Environmental Protection Agency (EPA) regulations and policy limit the options for disposing CTRTs through those facilities.

Recent research points to a pyrolysis process than can recover creosote and produce a material called biochar from CTRTs. Biochar is a residue of carbon and ashes from specific burning processes of biomass, such as rail crossties, and has a number of potential uses. These uses include filtration and use as a soil amendment to improve soil quality and to reduce acidity and nutrient leaching. In addition, converting used rail crossties to biochar can also sequester carbon, providing an option to help remove carbon dioxide from the atmosphere. In the August 2020 Journal of Analytical and Applied Pyrolysis (Vol 149, August 2020, 104826), a research paper entitled ''Pyrolysis of creosote-treated railroad ties to recover creosote and produce biochar'' found that CTRTs pyrolyzed to 700 °C resulted in residual creosote of 0.06% by weight of the original CTRT. This residual level would meet the qualification of a soil amendment under the European Biochar Certificate as no trace metals were found. This indicates there could be potential benefits and sustainable uses for used CTRTs.

FRA manages a number of grant programs that fund rail infrastructure improvements, including the Consolidated Rail Infrastructure and Safety Improvement grant program. Those FRA-funded rail activities under these grant programs include track and tie projects that replace worn CTRTs. Understanding the disposition of worn CTRTs will assist FRA in complying with the direction in E.O. 14008 to assess the climate impacts of these grant programs, and in researching greenhouse gas emissions from rail projects.[1] This information may also provide FRA with opportunities to offer technical assistance to grantees relating to the various options to dispose of CTRTs.

FRA is therefore seeking any information, public comment, or feedback, including information about initiatives and pilot studies, on how CTRTs could be reused or repurposed as an alternative to landfilling, including information regarding the biochar process. FRA is also interested in potential uses for CTRT-sourced biochar as well as other legal and potentially commercially viable options for used CTRTs. Where available and appropriate, FRA requests that respondents provide relevant technical information, statutory or regulatory citations, data, or other evidence to support their comments.

Interested parties are invited to submit comments to the electronic docket in response to this RFI. Please refer to the **ADDRESSES** section above for guidance on how to submit comments to the electronic docket.

Issued in Washington, DC.

Marlys Ann Osterhues,

Director, Office of Environmental Program Management.

[FR Doc. 2023–08689 Filed 4–24–23; 8:45 am]

BILLING CODE 4910–06–P

[1] See also DOT's Climate Plan, available at *https://www.transportation.gov/sites/dot.gov/files/2022-04/Climate_Action_Plan.pdf.*

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them. Additionally, OFAC is publishing the name of one person that has been removed from OFAC's SDN List. Property and interests relating to the person are no longer blocked, and U.S. persons are no longer generally prohibited from engaging in transactions relating to this person.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date.

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On April 18, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4810–AL–P

Individuals

1. AHMAD, Firas Nazem (Arabic: فراس ناظم احمد) (a.k.a. AHMAD, Firas; a.k.a. AHMAD, Firas Michael), 76 Waterstone Drive, Benmore Gardens, Johannesburg, South Africa; DOB 14 May 1991; nationality South Africa; alt. nationality Belgium; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport EH454630 (Belgium); alt. Passport 712211555 (United States); alt. Passport EJ586315 (Belgium) expires 23 Sep 2017; alt. Passport RL3752510 (Lebanon) expires 10 May 2021; Identification Number 9105146334188 (South Africa) (individual) [SDGT] (Linked To: AHMAD, Nazem Said).

   Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism," 66 FR 49079, as amended by Executive Order 13886 of September 9, 2019, "Modernizing Sanctions To Combat Terrorism," 84 FR 48041 (E.O. 13224, as amended), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, NAZEM SAID AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. AHMAD, Hind Nazem (Arabic: هند ناظم احمد) (a.k.a. AHMAD, Dida; a.k.a. AHMAD, Hind; a.k.a. AHMED, Hind Nazem), 92 Boulevard Flandrin, Paris, France; Residence Camelia, Cocody Danga, Nord Abidjan, Cote d Ivoire; DOB 04 Nov 1992; POB Antwerp, Belgium; nationality Belgium; Gender Female; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport EP784076 (Belgium) expires 03 May 2025; alt. Passport EI463437 (Belgium) expires 22 Mar 2016 (individual) [SDGT] (Linked To: AHMAD, Nazem Said).

   Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, NAZEM SAID AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. BAKER, Rami Yaacoub (a.k.a. BAKER, Rami Kamel Yaacoub (Arabic: رامي كامل يعقوب باقر); a.k.a. BAKER, Ramy Kamel Yaacoub; a.k.a. RAMI, Yaacoub Baker), Eden Gardens Building, Floor 3A-3B, Mina El Hosn-Zeytoune Street, Beirut,

Lebanon; 38 El Kawthar, Adnan Al Hakim Street, 7th Floor, Jnah, Beirut, Lebanon; DOB 29 May 1968; POB Beirut, Lebanon; nationality Lebanon; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport EN992200 (Belgium) expires 20 Dec 2022; alt. Passport EH970706 (Belgium) (individual) [SDGT] (Linked To: AHMAD, Nazem Said).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, NAZEM SAID AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

4. BAKER, Rima Yaacoub (a.k.a. AHMAD, Rima Kamel Nazem; a.k.a. BAKER, Rima Kamel Yaacoub (Arabic: ريما كامل يعقوب باقر); a.k.a. BAQER, Rima Kamel), Eden Gardens Building, 5th Floor, Fawzi Street, Beirut, Lebanon; DOB 25 Feb 1970; POB Beirut, Lebanon; nationality Lebanon; alt. nationality Belgium; Gender Female; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport LR0503197 (Lebanon) expires 01 Aug 2022; alt. Passport EM719287 (Belgium) expires 02 Mar 2022; alt. Passport E1277888 (Belgium) (individual) [SDGT] (Linked To: AHMAD, Nazem Said).

   Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, NAZEM SAID AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

5. EL RIZ, Daoud (a.k.a. DAOUD, El Riz; a.k.a. EL RIZ, Douad), Paris, France; DOB 04 Oct 1983; nationality France; alt. nationality Congo, Democratic Republic of the; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport A02118824 (Senegal) expires 21 Sep 2025; alt. Passport 05DK11992 (France) expires 08 Jun 2015; alt. Passport 15FV05021 (France) expires 14 Apr 2025; alt. Passport A01498634 (Senegal) expires 22 Apr 2020 (individual) [SDGT] (Linked To: AHMAD, Hind Nazem).

   Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, HIND NAZEM AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

6. FRANCISCO, Maricel Factura (a.k.a. FRANCISCO, Maricel), Dubai, United Arab Emirates; DOB 15 Dec 1975; nationality Philippines; Gender Female; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport S0261325; alt. Passport G609766 (Philippines) expires 06 Jan 2011 (individual) [SDGT] (Linked To: OSSEIRAN, Ali).

   Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ALI OSSEIRAN, a

person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

7. GHADDAR, Ibrahim Fadel (Arabic: ابراهيم فاضل غدار), Dubai, United Arab Emirates; DOB 22 Jan 1978; nationality France; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport 13FV29368; (individual) [SDGT] (Linked To: AHMAD, Nazem Said).

   Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, NAZEM SAID AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

8. HIJAZI, Mohamad Hussein (Arabic: محمد حسين حجازي) (a.k.a. HEJAZI, Mohammed; a.k.a. HIJAZI, Muhammad Husayn), Villa No. 1,251/9A Street, Al Mardaf, Dubai, United Arab Emirates; Abo Ghaleb Hamdan Building, Saint Therese Street, Hadath, Beirut, Lebanon; DOB 10 Oct 1974; POB Monrovia, Liberia; nationality Lebanon; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport LR2006465 (Lebanon) expires 22 Feb 2031; Identification Number 2712653 (Lebanon) (individual) [SDGT] (Linked To: AHMAD, Nazem Said).

   Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, NAZEM SAID AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

9. ISMAIL, Mohamad Hassan (Arabic: محمد حسن اسمعيل), Lyulin 408, Entrance B, Floor 5, Apt 95, Sofia, Bulgaria; Ramlet El Bayda, Fawaz Building, 4th Floor, Beirut, Lebanon; DOB 01 Jun 1985; POB Kounin, Lebanon; nationality Lebanon; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport LR2096669 (Lebanon); alt. Passport LR0484848 expires 31 Jul 2022; Identification Number 1003688727 (Bulgaria) (individual) [SDGT] (Linked To: AHMAD, Nazem Said).

   Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, NAZEM SAID AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

10. KHAWAJA, Mohamad (Arabic: محمد خواجه) (a.k.a. KHAWAJAH, Muhammad; a.k.a. KHAWAJAH, Muhammad Ali), Dubai, United Arab Emirates; DOB 12 Mar 1970; POB Lebanon; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport RL3566341 (Lebanon); alt. Passport RL0742799 (Lebanon); alt. Passport LR1800602 (Lebanon) expires 27 Sep 2030; Identification Number 78419700969812 (individual) [SDGT] (Linked To: AHMAD, Nazem Said).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, NAZEM SAID AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

11. MOSSALEM, Ali (a.k.a. AL-MOSSALEM, Ali Said (Arabic: علي سعيد المسلم); a.k.a. MOSSALEM, Ali Said), Lebanon; DOB 23 Dec 1983; POB Arnoun, Lebanon; nationality Lebanon; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Identification Number 000023845887 (Lebanon) (individual) [SDGT] (Linked To: AHMAD, Nazem Said).

    Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, NAZEM SAID AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

12. MURAD, Bassem (a.k.a. MURAD, Basem Hasan (Arabic: باسم حسين مراد); a.k.a. MURAD, Basim), Belgium; DOB 19 Mar 1978; nationality Belgium; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport ES992390 (Belgium) expires 07 Dec 2027; alt. Passport EH949960 (Belgium) expires 23 Feb 2015; alt. Passport EF346590 (Belgium) expires 25 Jul 2010 (individual) [SDGT] (Linked To: AHMAD, Firas Nazem).

    Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, FIRAS NAZEM AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

13. NACHAR, Ali (a.k.a. NACHAR, Ali Moussa (Arabic: علي موسى نشار); a.k.a. NACHEIR, Ali Moussa; a.k.a. NACHER, Ali Moussa; a.k.a. NASHAR, ‘Ali Musa), Lebanon; DOB 30 Jul 1967; POB Ivory Coast; nationality Lebanon; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Identification Number 000049952325 (Lebanon) (individual) [SDGT] (Linked To: AHMAD, Firas Nazem).

    Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, FIRAS NAZEM AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

14. NACHAR, Hussein Moussa (a.k.a. NACHAR, Hussein), Des Cataractes 3329, Gombe, Kinshasa, Congo, Democratic Republic of the; DOB 04 Jul 1966; nationality Lebanon; alt. nationality United Kingdom; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886;

Identification Number 505120217 (United Kingdom) (individual) [SDGT] (Linked To: AHMAD, Firas Nazem).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, FIRAS NAZEM AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

15. NAGARAJAN, Sundar (a.k.a. KASIVISWANATHAN NAGA, Nagarajan Sundar Poongulam), 32 Westlands Close, Hayes UB3 4PY, United Kingdom; Sint-Theresiastraat 33, Antwerp 2600, Belgium; DOB 27 Aug 1957; POB Madurai-Tamilnadu, India; nationality India; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport Z1871965 (India) expires 04 Feb 2019; Residency Number 114078810 (Lebanon) (individual) [SDGT] (Linked To: AHMAD, Nazem Said).

    Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, NAZEM SAID AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

16. NASSER, Rim, Lebanon; DOB 23 Sep 1989; POB Beirut, Lebanon; nationality Lebanon; Gender Female; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport RL3544453 (Lebanon) expires 12 Jan 2021; alt. Passport 4066019 (Lebanon) expires 08 Oct 2025 (individual) [SDGT] (Linked To: AHMAD, Firas Nazem).

    Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, FIRAS NAZEM AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

17. OSSEIRAN, Ali (a.k.a. ASAYRAN, Ali Raaouf; a.k.a. ASAYRAN, Ali Ra'ouf; a.k.a. OSSEIRAN, Ali Raouf), Dubai, United Arab Emirates; DOB 12 May 1967; nationality Lebanon; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport RL2898488 (Lebanon) expires 11 Aug 2019 (individual) [SDGT] (Linked To: AHMAD, Nazem Said; Linked To: AHMAD, Firas Nazem).

    Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, NAZEM SAID AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224.

18. SAAD, Fadi Abbas, Beirut, Lebanon; DOB 25 Apr 1979; nationality Lebanon; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as

amended by Executive Order 13886; Passport RL2084101 (Lebanon) (individual) [SDGT] (Linked To: AHMAD, Firas Nazem).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, FIRAS NAZEM AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

19. SADER, Fadi (a.k.a. SADER, Fadi Wadie; a.k.a. SADER, Fadi Wadie Naer; a.k.a. SADER, Fadie Wadie Nasr), Hong Kong, China; DOB 19 Jan 1963; POB Beirut, Lebanon; nationality Lebanon; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport GA238402 (Canada) expires 25 Apr 2024; Identification Number M177091 3 (Hong Kong) (individual) [SDGT] (Linked To: AHMAD, Firas Nazem).

    Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, FIRAS NAZEM AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

20. WEHBE, Mohamad (a.k.a. WAHBI, Muhammad), Bedfordview, Ekurhuleni, South Africa; 25 Sandhurst Vista, 13 Riepen Ave, Riepen Park, Sandton 2196, South Africa; DOB 14 Apr 1992; POB Lebanon; nationality Lebanon; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport 2654120 (Lebanon) expires 22 Oct 2018; Identification Number 9204146485189 (South Africa) (individual) [SDGT] (Linked To: AHMAD, Firas Nazem).

    Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, FIRAS NAZEM AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Entities

1. 76 BENMORE GARDEN TRUST, 76A Waterstone Estate, Benmore Gardens, Sandton 2196, South Africa; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Registration Number IT022428/2014(G) [SDGT] (Linked To: BAKER, Rami Yaacoub).

    Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, RAMI YAACOUB BAKER, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. AMANA DIAM DMCC (Arabic: امانة ديام) (a.k.a. AMANA DIAM), 3O-01-1609 Jewellery & Gemplex 3, Building No. 3, Plot No. 550-554, Dubai, United Arab Emirates; Unit 3308, Platinum Tower, Jumeirah Lake Towers, Dubai, United Arab

Emirates; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 02 Dec 2013; Registration Number DMCC-33511 (United Arab Emirates); alt. Registration Number DMCC4572 (United Arab Emirates); alt. Registration Number 11465558 (United Arab Emirates) [SDGT] (Linked To: BAKER, Rami Yaacoub).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, RAMI YAACOUB BAKER, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. ARTUAL GALLERY (a.k.a. "THE ART GALLERY" (Arabic: "معرض الفني")), Eden Garden Building, Ground Floor, Fawzi Al Daouk Street, Beirut, Lebanon; Wazir Building, 1st Floor, Ahmad Soloh Street, Jnah, Beirut, Lebanon; Property No. 3673, 1st Floor, Ahmed Saleh Street, Msaytbeh, Beirut, Lebanon; Website http://artual.co; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 20 Mar 2018; Registration Number 3427220 (Lebanon); alt. Registration Number 1024026 (Lebanon) [SDGT] (Linked To: AHMAD, Hind Nazem).

   Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, HIND NAZEM AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

4. ASSOCIATES OF PARTNERS SAL OFF-SHORE (Arabic: شركة اسوسياتس اوف بارتنرز ش.م.ل. اوف شور), Sami el Solh Street, Beirut, Lebanon; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 21 May 2009; Registration Number 1803328 (Lebanon) [SDGT] (Linked To: ISMAIL, Mohamad Hassan).

   Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, MOHAMAD HASSAN ISMAIL, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

5. BEST DIAMOND HOUSE DMCC (Arabic: بست دايموند هاوس م.د.م.س.), 23-C Almas Tower, Dubai, United Arab Emirates; P.O. Box 78501, Dubai, United Arab Emirates; 3O-01-3099 Jewellery & Gemplex 3, Dubai, United Arab Emirates; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 21 May 2005; Organization Type: Wholesale of jewelry, watches, precious stones, and precious metals; Registration Number DMCC-30193 (United Arab Emirates); alt. Registration Number DMCC-0399 (United Arab Emirates) [SDGT] (Linked To: AHMAD, Nazem Said).

   Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, NAZEM SAID AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

6. BEXLEY WAY GENERAL TRADING L.L.C. (Arabic: بكسلي واي للتجارة العامة ش.ذ.م.م.), Plot No. 144-405; Dubai, United Arab Emirates; P.O. Box 20579, Dubai, United Arab Emirates; P.O. Box 10847, Dubai, United Arab Emirates; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 06 Dec 2012; Commercial Registry Number 1105925 (United Arab Emirates); Registration Number 679880 (United Arab Emirates); alt. Registration Number 212281 (United Arab Emirates) [SDGT] (Linked To: AHMAD, Nazem Said).

   Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, NAZEM SAID AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

7. COLLECTING BEE SRL, 24 Bucharest, Str. Iuliu Valaori, municipality of Bucharest 30682, Romania (Latin: 24 Bucureşti, Str. Iuliu Valaori, Municipiul Bucureşti 30682, Romania); Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 21 May 2013; Romanian C.R. 31672834 (Romania); alt. Romanian C.R. J40/6457/2013 (Romania) [SDGT] (Linked To: BAKER, Rami Yaacoub).

   Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, RAMI YAACOUB BAKER, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

8. DEBBIYE 383 SAL (Arabic: الدبية 383 ش.م.ل.), Al Jnah, Poet Adnan Hakim, First Floor, Property 3673, Beirut, Lebanon; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 18 Oct 2012; Registration Number 1016055 (Lebanon) [SDGT] (Linked To: BAKER, Rami Yaacoub).

   Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, RAMI YAACOUB BAKER, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

9. DIDA, Abidjan Marcory, Rue Clement Ader, 01 PO Box, 3131, Abidjan 01, Cote d Ivoire (Latin: Abidjan Marcory, Rue Clément Ader, 01 Boîte Postale, 3131, Abidjan 01, Cote d Ivoire); Website https://www.didaaaa.com; Email Address info@didaaaa.com; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Phone Number 2250700002071 [SDGT] (Linked To: AHMAD, Hind Nazem).

   Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, HIND NAZEM AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

10. DIOTRIX PROPRIETARY LTD (a.k.a. DIOTRIX PTY LTD), 16 Ratcliffe Drive, Morning Side Manor, Gauteng, 2052, Johannesburg, South Africa; P.O. Box 575, Gauteng, 2052, Johannesburg, South Africa; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 25 Nov 2011; V.A.T. Number 4580271585 (South Africa); Tax ID No. 9497287178 (South Africa); Commercial Registry Number 2011/137072/07 (South Africa) [SDGT] (Linked To: OXFOCENTO PROPRIETARY LTD).

    Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, OXFOCENTO (PROPRIETARY) LTD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

11. FADICO H.K. LIMITED, Hong Kong, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 10 Feb 2012; Registration Number 1704628 (Hong Kong) [SDGT] (Linked To: AHMAD, Firas Nazem; Linked To: ARTUAL GALLERY).

    Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, FIRAS NAZEM AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

12. FADICO S A CC (f.k.a. FADICO CC), Upper Level, Rosemary Forum, 356 Rosemary St, Lynwood, Menlo Park 0081, South Africa; P.O. Box 95030, Waterkloof, Pretoria 0145, South Africa; Website fadicogroup.com; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 28 May 1993; V.A.T. Number 4280168818 (South Africa); Tax ID No. 9251151644 (South Africa); Commercial Registry Number 1993/012838/23 (South Africa) [SDGT] (Linked To: SADER, Fadi).

    Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, FADI SADER, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

13. G AND S DIAMOND FZE (Arabic: جي اند اس دايموند م م ح) (a.k.a. G&S DIAMOND FZE), Dubai Airport Free Zone Authority, Dubai, United Arab Emirates; P.O. Box 78426, Dubai, United Arab Emirates; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Registration Number 2901 (United Arab Emirates); alt. Registration Number 1511 (United Arab Emirates) [SDGT] (Linked To: AHMAD, Nazem Said).

    Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, NAZEM SAID AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

14. GAVIA TRADINGS PTY LTD (f.k.a. GAVIA BEAUTY COSMETICS PTY LTD), 318 Kingsley West Wing, Gauteng, 2006, Johannesburg, South Africa; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 08 Apr 2019; V.A.T. Number 4490286517 (South Africa); Tax ID No. 9389475196 (South Africa); Commercial Registry Number 2019/143224/07 (South Africa) [SDGT] (Linked To: WEHBE, Mohamad).

    Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, MOHAMAD WEHBE, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

15. HELICS GEMB (a.k.a. HELICS GEMB BVBA), Hoveniersstraat 30, B. 199, Antwerpen 2018, Belgium; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 07 May 2012; Organization Type: Chemicals and allied products wholesale; Registration Number 0845843067 (Belgium); alt. Registration Number 1003665-78 (Belgium) [SDGT] (Linked To: AMANA DIAM DMCC).

    Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AMANA DIAM DMCC, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

16. HIGHRISE PROPERTY INVESTMENTS PTY LTD, F2W1 The Paragon II, 16 Kings Road, Bedfordview, Johannesburg, Gauteng 2007, South Africa; P.O. Box 752368, Johannesburg, Gauteng 2047, South Africa; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 14 Feb 2012; V.A.T. Number 4120261039 (South Africa); Tax ID No. 9410146170 (South Africa); Commercial Registry Number 2012/027862/07 (South Africa) [SDGT] (Linked To: OXFOCENTO PROPRIETARY LTD; Linked To: DIOTRIX PROPRIETARY LTD).

    Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, DIOTRIX (PROPRIETARY) LTD and OXFOCENTO (PROPRIETARY) LTD, persons whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

17. HOUSE OF ART LIMITED, Suites 2111-13, 21/F, Prudential Tower, The Gateway, Harbour City, 21 Canton Road, Tsimshatsui, Kowloon, Hong Kong, China; Room 201, Yu To Sang Building, 37 Queen's Road Central, Hong Kong, China; Website www.house-of-art.com.hk; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 14 May 2014; Registration Number 2096541 (Hong Kong) [SDGT] (Linked To: MEGA GEMS PTY LTD).

    Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or

technological support for, or goods or services to or in support of, MEGA GEMS PTY LTD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

18. IDIAMS DMCC, Dubai, United Arab Emirates; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 15 Oct 2012; Registration Number DMCC-32587 (United Arab Emirates); alt. Registration Number DMCC-3609 (United Arab Emirates); alt. Registration Number 11458255 (United Arab Emirates) [SDGT] (Linked To: AHMAD, Nazem Said).

    Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, NAZEM SAID AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

19. ISMAIL GENERAL TRADING (Arabic: اسماعيل للتجارة العامة) (a.k.a. ISMAIL FOR GENERAL TRADE; a.k.a. MOHAMED HASSANE ISMAIL), Khaldeh, Al Qubbah, King Mohammad Ismail, Section 5, Block B, Mount Lebanon, Lebanon; Mohamed Ismail Property, B Kobbe, Baabda, Lebanon; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 21 Oct 2009; Registration Number 2018166 (Lebanon) [SDGT] (Linked To: ISMAIL, Mohamad Hassan).

    Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, MOHAMAD HASSAN ISMAIL, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

20. JOUD GENERAL TRADING (Arabic: جود للتجارة العامة), Nabatieh, Lebanon; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 05 Jul 2015; Registration Number 6003072 (Lebanon) [SDGT] (Linked To: ISMAIL, Mohamad Hassan).

    Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, MOHAMAD HASSAN ISMAIL, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

21. MEGA GEMS PTY LTD (f.k.a. "XXX DIAMONDS PTY LTD"), The Paragon II F1W1, 1 Krammer Road, Bedfordview, Gauteng 2007, South Africa; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 21 Jul 2015; V.A.T. Number 4180271522 (South Africa); Tax ID No. 9825071161 (South Africa); Commercial Registry Number 2015/252356/07 (South Africa) [SDGT] (Linked To: AHMAD, Firas Nazem).

    Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, FIRAS NAZEM

AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

22. MSD CAPITAL PTY LTD (f.k.a. MATAROMAX PTY LTD), F4E3 The Paragon II, 1 Krammer Road, Johannesburg, Gauteng 2007, South Africa; P.O. Box 35465, Johannesburg, Gauteng 0102, South Africa; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 23 Nov 2018; V.A.T. Number 4490288372 (South Africa); Tax ID No. 9407308197 (South Africa); Commercial Registry Number 2018/607460/07 (South Africa) [SDGT] (Linked To: MURAD, Bassem).

    Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, BASSEM MURAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

23. MSD DMCC (Arabic: إم إس دي م.د.م.س.), Almas-18-A, Dubai, United Arab Emirates; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 21 Jul 2004; Registration Number DMCC0129 (United Arab Emirates) [SDGT] (Linked To: MURAD, Bassem).

    Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, BASSEM MURAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

24. MSD SPRL DIAMOND TRADING, 178 Ellaline Road, Mondeor, Johannesburg, Gauteng 2001, South Africa; F4E2 The Paragon II, 16 Kings Road, Bedfordview, Johannesburg, Gauteng 2007, South Africa; SA Jewellery Centre, 307 225 Main St, Johannesburg 2001, South Africa; Suite 307 Jewelcity, Johannesburg 2001, South Africa; Website www.msd.co.za; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 17 Jan 2011; V.A.T. Number 4340259870 (South Africa); Tax ID No. 9971121158 (South Africa); Commercial Registry Number 2011/005434/23 (South Africa); Registration Number K2022580085 (South Africa) [SDGT] (Linked To: OXFOCENTO PROPRIETARY LTD).

    Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, OXFOCENTO (PROPRIETARY) LTD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

25. MURAD EN SONS DIAMONDS (a.k.a. "M.S.D."), 30 Hoveniersstraat, Antwerp 2018, Belgium; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 18 Sep 1997; Organization Type: Wholesale of jewelry, watches, precious stones, and precious metals; Tax ID No. 0461522238 (Belgium); Registration Number 1759006-72 (Belgium) [SDGT] (Linked To: MURAD, Bassem).

Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, BASSEM MURAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

26. ORIENTAL DYNASTY LIMITED, Hong Kong, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Registration Number 1558345 (Hong Kong) [SDGT] (Linked To: AHMAD, Firas Nazem).

    Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, FIRAS NAZEM AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

27. OXFOCENTO PROPRIETARY LTD (a.k.a. OXFOCENTO PTY LTD), Sandhavon Office Park, 1st Floor, Block D, 12 Pongola Crescent, Sandton 2090, South Africa; P.O. Box 37172, Birnam Park, Gauteng, 2015, South Africa; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; V.A.T. Number 4500293222 (South Africa); Tax ID No. 9997361176 (South Africa); Commercial Registry Number 2020/691209/07 (South Africa); Enterprise Number K2020691209 (South Africa) [SDGT] (Linked To: WEHBE, Mohamad).

    Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, MOHAMAD WEHBE, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

28. PARK VENTURES SAL (Arabic: شركة بارك فنتشرز ش.م.ل.), Al Wazir Building, First Floor, Ahmad Solah Street, Jnah, Beirut, Lebanon; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 25 Jun 2004; Organization Type: Management consultancy activities; Registration Number 1002986 (Lebanon); alt. Registration Number 742783 (Lebanon) [SDGT] (Linked To: BAKER, Rima Yaacoub).

    Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, RIMA YAACOUB BAKER, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

29. THULA UZWE TRADING, 18 Alexandra Street, Verreniging, Emfuleni, 1830, South Africa; The Paragon II, Office F1W1, 16 Kings Road, Bedfordview 2007, South Africa; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 30 Jun 2010; V.A.T. Number 4650272281 (South Africa); Tax ID No. 9427992160 (South Africa); Commercial Registry Number 2010/096811/23 (South Africa) [SDGT] (Linked To: AHMAD, Firas Nazem).

    Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, FIRAS NAZEM

AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

30. TIA TRADING 2013 LTD OOD (a.k.a. TIA TRADING 2013 LTD (Cyrillic: ТИА ТРЕЙДИНГ 2013)), Kvartal Studentski Grad, U1. Prof G. Bradistilov, 8, Sofia 1700, Bulgaria; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 04 Apr 2017; Registration Number 204532789 (Bulgaria) [SDGT] (Linked To: ISMAIL, Mohamad Hassan).

    Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, MOHAMAD HASSAN ISMAIL, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

31. UNITED INVESTMENT GROUP SAL (Arabic: يونايتد انفستمنت غروب ش.م.ل.), Mar Elias Malek Mansour, Haret Saida, Beirut, Lebanon; Adnan El Hakim Street, Al Wazir Building, Floor 1, Jnah, Beirut, Lebanon; Verdun 730, 4th Floor, Rashid Karameh Street, Beirut, Lebanon; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 14 Apr 1994; Registration Number 66884 (Lebanon) [SDGT] (Linked To: AHMAD, Nazem Said).

    Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, NAZEM SAID AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

32. WHITE STAR DMCC (Arabic: وايت ستار م.د.م.س.) (f.k.a. WAZNI GEMS DMCC), Unit No. 98, DMCC Business Centre, Level No. 5, Jewellery and Gemplex 2, Dubai, United Arab Emirates; Almas Tower, 41-J Jumeirah Lake Towers, Dubai, United Arab Emirates; P.O. Box 340841, Dubai, United Arab Emirates; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 15 Jun 2008; Tax ID No. 100072307000003 (United Arab Emirates); Registration Number DMCC-31921 (United Arab Emirates); alt. Registration Number DMCC1189 (United Arab Emirates) [SDGT] (Linked To: AHMAD, Nazem Said).

    Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, NAZEM SAID AHMAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

On June 10, 2021, OFAC designated the following person pursuant to Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism," as amended by

Executive Order 13886 of September 9, 2019, "Modernizing Sanctions to Combat Terrorism." On April 18, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following individual are no longer blocked, and the individual has been removed from the SDN List.".

Individual

1. SABHARWAL, Manoj, Dubai, United Arab Emirates; DOB 01 Dec 1960; POB Durg, India; nationality India; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Passport Z3795762 (India) (individual) [SDGT] (Linked To: AL-JAMAL, Sa'id Ahmad Muhammad).

BILLING CODE 4810–AL–C

Dated: April 18, 2023.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–08665 Filed 4–24–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Internal Revenue Service Advisory Council (IRSAC); Nominations

AGENCY: Internal Revenue Service, Department of the Treasury.

ACTION: Request for nominations.

SUMMARY: The Internal Revenue Service (IRS) is seeking new members to serve on the Internal Revenue Service Advisory Council (IRSAC). Applications are currently being accepted for appointments that will begin in January 2024. IRSAC members are drawn from substantially diverse backgrounds representing a cross-section of the taxpaying public with substantial, disparate experience in: tax preparation for individuals, small businesses and large, multi-national corporations; tax-exempt and government entities; information reporting; and taxpayer or consumer advocacy. Nominations of qualified individuals may come from individuals or organizations; applications should describe and document the proposed member's qualifications for IRSAC.

DATES: Applications must be received on or before May 31, 2023.

ADDRESSES: Applications should be submitted to IRS National Public Liaison via email to *publicliaison@irs.gov* or electronic fax to 855–811–8021. Applications are available on the IRS website at *https://www.irs.gov/irsac.*

FOR FURTHER INFORMATION CONTACT: Anna Brown at 202–317–6564 (not a toll-free number) or send an email to *publicliaison@irs.gov.*

SUPPLEMENTARY INFORMATION: In particular, the IRSAC is seeking applicants with specific knowledge and background in the following areas:

Individual Wage & Investment—Knowledge of tax law application/tax preparation experience, income tax issues related to refundable credits, the audit process, and/or how information returns are used and integrated for compliance; experience educating on tax issues and topics, with multi-lingual taxpayer communications, with taxpayer advocacy or contact center operations, marketing/applying industry benchmarks to operations, with tax software industry, and/or with the creation or use of diverse information returns used to report income, deductions, withholding, or other information for tax purposes; familiarity with IRS tax forms and publications; familiarity with IRS's online applications (*e.g.,* Online Account, EITC Assistant, etc.); financial services information technology background with knowledge of technology innovations in public and private customer service sectors.

Information Reporting—Knowledge of banking industry and/or possess broker-dealer background with experience filing information returns; knowledge of payroll industry; experience with retirement withholding and reporting.

Large Business & International—Experience as a certified public accountant or tax attorney working in or for a large, sophisticated multinational organization; experience working in-house at a major firm dealing with tax planning for complex organizations including large multinational corporations and large partnerships.

Small Business & Self-Employed—Knowledge or experience with digital assets and/or peer to peer payment applications; knowledge of passthrough entities and/or fiduciary tax; experience with online or digital businesses, audit representation and/or educating on tax issues and topics; knowledge base and/or background related to Collection activities and balance due case resolution options; experience as a practitioner in one or more underserved communities (*e.g.,* where English is not the first language); experience with digitalization systems, tools, or processes; marketing experience to help with ideas for increasing uptake of digital tools offered by the IRS; knowledge of IRS modernization projects; understanding of the Inflation Reduction Act and how it will impact the IRS in the coming years; experience developing and/or delivering virtual presentations.

Tax Exempt & Government Entities—Experience with Indian tribal governments; experience in Federal, State, or local governments; experience in tax-exempt bonds and/or employee plans.

The IRSAC is authorized under the Federal Advisory Committee Act, 5 U.S.C. 10. It serves as an advisory body to the Commissioner of Internal Revenue and provides an organized public forum for discussion of relevant tax administration issues between IRS officials and representatives of the public. The IRSAC proposes enhancements to IRS operations; recommends administrative and policy changes to improve taxpayer service, compliance and tax administration; discusses relevant information reporting

issues; addresses matters concerning tax-exempt and government entities; and conveys the public's perception of professional standards and best practices for tax professionals.

The IRSAC holds approximately four, two-day working sessions and at least one public meeting per year. Members are not paid for their services; any travel expenses are reimbursed within federal government guidelines.

Appointed by the Commissioner of Internal Revenue with the concurrence of the Secretary of the Treasury, IRSAC members will serve three-year terms to allow for a rotation in membership which ensures that different perspectives are represented. In accordance with the Department of Treasury Directive 21–03, a clearance process, including a tax compliance check and a practitioner check with the IRS Office of Professional Responsibility, will be conducted. In addition, all applicants deemed ''Best Qualified'' shall undergo a Federal Bureau of Investigation fingerprint check.

All applicants will be sent an acknowledgment of receipt.

Equal opportunity practices will be followed for all appointments to the IRSAC in accordance with the Department of Treasury and IRS policies. The IRS has special interest in assuring that women and men, members of all races and national origins, and individuals with disabilities have an opportunity to serve on advisory committees. Therefore, the IRS extends particular encouragement to nominations from such appropriately qualified candidates.

Dated: April 20, 2023.

John A. Lipold,

Designated Federal Official, Office of National Public Liaison, Internal Revenue Service.

[FR Doc. 2023–08713 Filed 4–24–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments on Form 970

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 970, Application to Use LIFO Inventory Method.

DATES: Written comments should be received on or before June 26, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov*. Include OMB Control No. 1545–0042 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov*.

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Application to Use LIFO Inventory Method.

OMB Number: 1545–0042.

Form Number: Form 970.

Abstract: Taxpayers file Form 970 to elect to use the last-in, first-out (LIFO) inventory method or to extend the LIFO method to additional goods. The IRS uses Form 970 to determine if the election was properly made. The estimates in this notice are for estates, trusts, and tax-exempt organizations filing Form 970.

Current Actions: There is no change to the existing collection. However, the estimated number of responses was reduced to eliminate duplication of burden estimates. The estimated burden for individuals filing Form 970 is approved under OMB control number 1545–0074, and the estimated burden for businesses filing Form 970 is approved under OMB control number 1545–0123.

Type of Review: Extension of a currently approved collection.

Affected Public: Private sector.

Estimated Number of Responses: 100.

Estimated Time per Respondent: 21 hours, 6 minutes.

Estimated Total Annual Burden Hours: 2,111.

The following paragraph applies to all of 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 as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 20, 2023.

Jon R. Callahan,

Tax Analyst.

[FR Doc. 2023–08727 Filed 4–24–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Internal Revenue Service (IRS) Information Collection Request

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before May 25, 2023 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent

within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

Title: Form 8609, Low-Income Housing Credit Allocation Certification; Form 8609–A, Annual Statement for Low-Income Housing Credit.

OMB Number: 1545–0988.

Regulation Project Number: Form 8609 and 8609–A.

Abstract: Owners of residential low-income rental buildings are allowed a low-income housing credit for each qualified building over a 10-year credit period. Form 8609 can be used to obtain a housing credit allocation from the housing credit agency. A separate Form 8609 must be issued for each building in a multiple building project. Form 8609 is also used to certify certain information. Form 8609–A is filed by a building owner to report compliance with the low-income housing provisions and calculate the low-income housing credit. Form 8609–A must be filed by the building owner for each year of the 15-year compliance period. File one Form 8609–A for the allocation(s) for the acquisition of an existing building and a separate Form 8609–A for the allocation(s) for rehabilitation expenditures.

Current Actions: There are no changes to the burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, not-for-profit institutions, and farms.

Estimated Number of Responses: 33,000.

Estimated Time per Respondent: 12 Hours 58 minutes.

Estimated Total Annual Burden Hours: 428,265.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2023–08687 Filed 4–24–23; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Renewal of the Treasury Borrowing Advisory Committee

ACTION: Notice of renewal.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended with the concurrence of the General Services Administration, the Secretary of the Treasury is renewing the Treasury Borrowing Advisory Committee (the ''Committee'').

FOR FURTHER INFORMATION CONTACT: Fred Pietrangeli, Director, Office of Debt Management (202) 622–1876.

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to provide informed advice as representatives of the financial community to the Secretary of the Treasury and Treasury staff, upon the Secretary of the Treasury's request, in carrying out Treasury responsibilities for Federal financing and public debt management. The Committee meets to consider and provide advice on special items pertaining to immediate Treasury funding requirements and longer-term approaches to manage the national debt in a cost-effective manner. The Committee usually meets immediately before Treasury announces each quarter's funding operation, although special meetings also may be held. Membership consists of approximately 15 to 20 representative or special government employee members who are appointed by Treasury. The members are senior-level officials who are employed by primary dealers, institutional investors, and other major participants in the government securities and financial markets as well as recognized experts in the fields of economics and finance, financial market analysis, or financial institutions and markets.

The Treasury Department transmitted copies of the Committee's renewal charter to the Senate Committee on Finance, the House Committee on Ways and Means, the Senate Committee on Banking, Housing and Urban Affairs, and the House Committee on Financial Services in Congress on or about April 20, 2023.

Dated: April 20, 2023.

Frederick Pietrangeli,

Director of the Office of Debt Management.

[FR Doc. 2023–08723 Filed 4–24–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; Multiple Community Development Financial Institutions Fund (CDFI Fund) Information Collection Requests

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The U.S. Department of the Treasury, as part of a continuing effort to reduce paperwork and respondent burden, invites the general 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 (PRA) of 1995. Currently, the Community Development Financial Institutions Fund (CDFI Fund), U.S. Department of the Treasury, is soliciting comments concerning the Performance Progress Report and Financial Statement Audit Report Form, the Uses of Award Report Form, and the Allocation and Qualified Equity Investment Tracking System.

DATES: Comments should be received on or before May 25, 2023 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION:

Community Development Financial Institutions (CDFI)

1. *Title:* Performance Progress Report and Financial Statement Audit Report Form.

OMB Number: 1559–0050.

Abstract: Recipients of the Community Development Financial Institutions Program (CDFI Program), the CDFI Rapid Response Program (CDFI RRP), the Native American CDFI Assistance Program (NACA Program), and the Small Dollar Loan Program (SDL Program) submit the Performance Progress Report via the CDFI Fund's AMIS once a year, three (3) months after their Period of Performance end date or fiscal year end. Recipients and Allocatees of the CDFI Program, CDFI RRP, NACA Program, CMF, NMTC Program, and SDL Program also submit the Financial Statement Audit Report

via the CDFI Fund's AMIS once a year, six (6) months after their Period of Performance end date or fiscal year end. Recipients respond to the questions below by providing numerical figures, ''yes'' or ''no'' answers, or narrative responses, as appropriate. These reports are used to determine Recipient compliance with their Assistance Agreement. There are no significant content changes to the forms, however minor, non-substantive modifications were made to the Performance Progress Report to include changes resulting from the implementation of new programs and modifications to existing Assistance Agreements.

Current Actions: Extension without change of currently approved collection.

Type of Review: Regular.

Affected Public: Businesses or other for-profit institutions, non-profit entities, and State, local and Tribal entities participating in the CDFI Fund programs.

Estimated Number of Respondents: 1,902.

Frequency of Responses: Annually.

Estimated Total Number of Annual Responses: 1,902.

Estimated Annual Time per Respondent: 45 min.

Estimated Total Annual Burden Hours: 1,426.5 hours.

2. *Title:* Uses of Award Report Form.

OMB Number: 1559–0032.

Abstract: Recipients of the Bank Enterprise Award Program (BEA Program), the Community Development Financial Institutions Program (CDFI Program), the CDFI Rapid Response Program (CDFI RRP), the Native American CDFI Assistance Program (NACA Program), and the Small Dollar Loan Program (SDL Program) submit the Uses of Award Report via the CDFI Fund's AMIS once a year, three (3) months after their Period of Performance (BEA Program) end date or fiscal year end (CDFI, CDFI RRP, NACA and SDL Programs). Recipients respond to the questions below by providing numerical figures, ''yes'' or ''no'' answers, or narrative responses, as appropriate. This report is used to determine Recipient compliance with the applicable performance goals in their Award or Assistance Agreement, and to demonstrate how award funds are expended. There is no significant content change to the form, however minor, non-substantive modifications were made to the Uses of Award Report to include changes resulting from the implementation of new programs and modifications to existing Award and Assistance Agreements.

Current Actions: Extension without change of currently approved collection.

Type of Review: Regular.

Affected Public: Businesses or other for-profit institutions, non-profit entities, and State, local and Tribal entities participating in the CDFI Fund programs.

Estimated Number of Respondents: 1,902.

Frequency of Responses: Annually.

Estimated Total Number of Annual Responses: 1,902.

Estimated Annual Time per Respondent: 45 min.

Estimated Total Annual Burden Hours: 1,426.5 hours.

3. *Title:* Allocation and Qualified Equity Investment Tracking System.

OMB Number: 1559–0024.

Abstract: Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (the Act), as enacted by section 1(a)(7) of the Consolidated Appropriations Act, 2001 (Pub. L. 106–554, December 21, 2000), amended the Internal Revenue Code (IRC) by adding IRC sec. 45D, New Markets Tax Credit. Pursuant to IRC sec. 45D, the Department of the Treasury, through the CDFI Fund, administers the NMTC Program, which provides an incentive to investors in the form of tax credits over seven years and stimulates the provision of private investment capital that, in turn, facilitates economic and community development in low-income communities. In order to qualify for an allocation of NMTC Program authority, an entity must be certified as a qualified Community Development Entity and submit an allocation application to the CDFI Fund. Upon receipt of such applications, the CDFI Fund conducts a competitive review process to evaluate applications for the receipt of NMTC Program allocations. Entities selected to receive an NMTC Program allocation must enter into an Allocation Agreement with the CDFI Fund. The Allocation Agreement contains the terms and conditions, including all reporting requirements, associated with the receipt of a NMTC Program allocation. The CDFI Fund requires each Allocatee to use an electronic data collection and submission system, known as the Allocation and Qualified Equity Investment Tracking System (AQEI), to report on the information related to its receipt of a Qualified Equity Investment. The CDFI Fund developed the AQEI to, among other things: (1) enhance the Allocatee's ability to report to the CDFI Fund timely information regarding the issuance of its Qualified Equity Investments; (2) enhance the CDFI Fund's ability to monitor the issuance of Qualified Equity Investments to ensure that no Allocatee exceeds its allocation authority and to ensure that Qualified Equity Investments are issued within the timeframes required by the Allocation Agreement and IRC § 45D; (3) provide the CDFI Fund with basic investor data that can be aggregated and analyzed in connection with NMTC Program evaluation efforts; and (4) provide the CDFI Fund with information about the status of Qualified Active Low-Income Community Businesses and Qualified Low-Income Community Investments at the end to the tax credit compliance period.

Current Actions: Renewal of Existing Information Collection.

Type of Review: Regular.

Affected Public: NMTC Program Allocatees.

Estimated Number of Respondents: 104.

Frequency of Responses: Annually.

Estimated Total Number of Annual Responses: 104.

Estimated Total Hours per Response: 1.7 hours.

Estimated Total Annual Burden Hours: 2,080 hours.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2023–08669 Filed 4–24–23; 8:45 am]

BILLING CODE 4810–70–P

UNITED STATES INSTITUTE OF PEACE

Notice Regarding Board of Directors Meetings

AGENCY: United States Institute of Peace (USIP) and Endowment of the United States Institute of Peace.

ACTION: Announcement of meeting.

SUMMARY: USIP announces the next meeting of the Board of Directors.

DATES: Friday, April 28, 2023 (9 a.m.–12:30 p.m.).

The next meeting of the Board of Directors will be held July 21, 2023.

ADDRESSES: 2301 Constitution Avenue NW, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Megan O'Hare, 202–429–4144, *mohare@usip.gov.*

SUPPLEMENTARY INFORMATION: Open Session—Portions may be closed pursuant to subsection (c) of section 552b of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

Authority: 22 U.S.C. 4605(h)(3).

Dated: April 20, 2023.

Rebecca Fernandes,

Director of Accounting.

[FR Doc. 2023–08702 Filed 4–24–23; 8:45 am]

BILLING CODE 2810–03–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Veterans Health Administration (VHA), Department of Veterans Affairs (VA).

ACTION: Notice of modified system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, notice is hereby given that the VA is modifying the system of records entitled ''Disaster Emergency Medical Personnel System (DEMPS)-VA'' (98VA104). This system is used to provide information on sufficient health care medical support personnel to respond to disasters, to provide information to the VHA Office of Emergency Management (OEM) primarily during national, regional, or local emergencies caused by catastrophic events, and to respond to internal emergencies occurring within the Veterans Integrated Service Networks (VISN) requiring support to VHA facilities or National Disaster Frameworks, Emergency Support Function 8 (ESF 8) assistance to Federal, State, local, Territorial, or Tribal (SLTT) partners.

DATES: Comments on this modified system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the modified system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005R1A), Washington, DC 20420. Comments should indicate that they are submitted in response to ''Disaster Emergency Medical Personnel System (DEMPS)-VA'' (98VA104). Comments received will be available at regulations.gov for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Stephania Griffin, Veterans Health Administration Chief Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, *stephania.griffin@va.gov,* telephone number 704–245–2492 (Note: This is not a toll-free number).

SUPPLEMENTARY INFORMATION: VA is modifying the system by revising the System Name, System Number, System Location; System Manager; Purpose; Categories of Individuals Covered by the System; Categories of Records in the System; Records Source Categories; Routine Uses of Records Maintained in the System; Policies and Practices for Retention and Disposal of Records; and Physical, Procedural and Administrative Safeguards.

The System Name will be changed from ''Disaster Emergency Medical Personnel System (DEMPS)-VA'' to ''Performance Improvement Management System (PIMS), Deployment Management System (DMS)-VA''.

The System Number will be changed from 98VA104 to 98VA10 to reflect the current VHA organizational routing symbol.

The System Location is being updated to remove verbiage indicating that records are maintained at each of the VA health care facilities. The address locations for VA facilities were listed in VA Appendix I of the biennial publication of the VA systems of record. Information from these records or copies of records may be maintained at the Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; Network Directors' Offices; Emergency Management Strategic Healthcare Group Headquarters, VA Medical Center, Martinsburg, WV 25401; or with the Area Emergency Managers located at VA facilities. This section will now reflect the following: Records are maintained within the DMS/PIMS infrastructure and database. PIMS is a web-based system developed and hosted under contract with the Oak Ridge Associated Universities (ORAU). ORAU's cognizant government contracting office is the U.S. Department of Energy (DOE), Oak Ridge National Laboratory Site Office. PIMS is hosted on a Windows stack (Web and Structured Query Language server); all tiers of the PIMS application stack are hosted in a virtual hosting environment by ORAU in their data center in Oak Ridge, Tennessee.

The System Manager is being updated to replace Director, Emergency Management Strategic Healthcare Group (EMSHG (13C)), with Executive Director, VHA OEM.

The Purpose is being updated to revise verbiage indicating that records are used for the Emergency Management Strategic Healthcare Group primarily in times of national emergencies caused by catastrophic events, and to respond to internal emergencies occurring within the VISNs. This section will now reflect the following: Provide information to VHA OEM primarily in times of national, regional, or local emergencies requiring support to VHA facilities or National Disaster Frameworks, Emergency Support Function 8 (ESF 8) assistance to Federal, SLTT partners.

Categories of Individuals Covered by the System is being updated to remove terrorist attacks, and the employment of nuclear, biological, and chemical weapons of mass destruction. This section will include supporting staff, man-made hazards, and other positions required for hospital and health care operations.

Categories of Records in the System is being updated to remove: Information is provided on a voluntary basis. This section will include supporting staff, and mission assignments from other Federal departments and agencies. Information such as name, professional title, credentialing, home station, professional specialty, job position title.

Records Source Categories is being updated to include: the Light Electronic Action Framework (LEAF) system is used to provide credentialing and privileging of health care providers and personnel.

Policies and Practices for Retention and Disposal of Records is being updated to include VHA Records Control Schedule 10–1, Item Number 1270.1.

The following routine use #4 is being updated to include Clinical Deployment Team, Telehealth Emergency Management, or other VHA personnel.

The following routine use #10 is being removed: Information may be disclosed to a State or local government entity or national certifying body that has the authority to make decisions concerning the issuance, retention or revocation of licenses.

The following routine use is now being replaced as #10: Data Breach Response and Remediation, for Another Federal Agency: To another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and

operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

Physical, Procedural and Administrative Safeguards is being updated to include VA Police Service. Number 2 will remove: Access to the Veterans Health Information Systems Technology Architecture (VistA) computer room within the health care facilities is generally limited by appropriate security devices and restricted to authorized VA employees and vendor personnel. Automatic Data Processing (ADP) peripheral devices are generally placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Authorized VA employees may access information in the VistA system. Access to file information is controlled at two levels: The system recognizes authorized employees by a series of individually unique passwords/codes as a part of each data message, and the employees are limited to only that information in the file which is needed in the performance of their official duties. This section will now reflect the following: All tiers of the VHA PIMS application stack are hosted in a highly available, resilient, and redundant virtual hosting environment. The internet connection is provided through the Department of Energy's Energy Science Network (ES.NET), managed by ORAU under a DOE Authority to Operate (ATO). As part of the ATO, VHA PIMS has been built in accordance with applicable Federal Information Security Management Act and National Institute of Standards and Technology (NIST) security and privacy control requirements for Federal information systems with implementation of all baseline security controls commensurate with the Federal Information Processing Standard 199 system security categorization. ORAU handles data in PIMS in accordance with the appropriate NIST classification.

Signing Authority

The Senior Agency Official for Privacy, 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. Kurt D. DelBene, Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on March 18, 2023 for publication.

Dated: April 20, 2023.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

Performance Improvement Management System (PIMS), Deployment Management System (DMS)-VA (98VA10).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained within the DMS/PIMS infrastructure and database. PIMS is a web-based system developed and hosted under contract with the Oak Ridge Associated Universities (ORAU). ORAU's cognizant government contracting office is the U.S. Department of Energy (DOE), Oak Ridge National Laboratory Site Office. PIMS is hosted on a Windows stack (Web and Structured Query Language server); all tiers of the PIMS application stack are hosted in a virtual hosting environment by ORAU in their data center in Oak Ridge, Tennessee.

SYSTEM MANAGER(S):

Official responsible for maintaining the system: Executive Director, Veterans Health Administration (VHA) Office of Emergency Management (OEM), VA Medical Center, Martinsburg, West Virginia, 25405. Telephone number 304–264–4827 (Note: This is not a toll-free number).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of this system of records is Executive Order 12656 dated November 18, 1988.

PURPOSE(S) OF THE SYSTEM:

The records may be used for such purpose as to provide information on sufficient health care medical and support personnel to respond to disasters, to provide information to VHA OEM primarily in times of national, regional, or local emergencies requiring support to VHA facilities or National Disaster Frameworks, Emergency Support Function 8 (ESF 8) assistance to Federal, State, Local, Territorial, or Tribal (SLTT) partners.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

These records include information on VA employees who make application to VA and are considered for deployment as health care providers and supporting staff, primarily in times of national, regional, or local emergencies in response to domestic disasters resulting from natural, technological, or man-made hazards. These individuals may include audiologists, dentists, dietitians, expanded-function dental auxiliaries, licensed practical vocational nurses, nuclear medicine technologists, nurse anesthetists, nurse practitioners, nurses, occupational therapists, optometrists, clinical pharmacists, licensed physical therapists, physician assistants, physicians, podiatrists, psychologists, registered respiratory therapists, certified respiratory therapy technicians, diagnostic and therapeutic radiology technologists, social workers, speech pathologists, contracting specialists, building maintenance, engineering, housekeeping, other positions required for hospital and health care operations and other personnel associated with emergency management.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include information on VA employees who make application to be deployed as health care providers and supporting staff primarily in times of national, regional, or local emergencies. This source document provides personal and demographic information, such as name, professional title, credentialing, home station, professional specialty, job position title, initiated, provided, and authenticated by the employee and contains the necessary approvals and signatures of officials in the supervisory chain for the employee's inclusion in the database. Information related to identifying and selecting by VHA OEM, Veterans Integrated Services Networks (VISN) and VA medical facility personnel eligible to support specific job taskings and assignments during disasters internal to the VHA health care system or external to VHA for which the VA is tasked to provide support under applicable authorities. Requests for issuance of travel orders and necessary reimbursement to VA for subsequent allocation of funds to home stations of deployed personnel are required to cover costs of travel, overtime and other expenses associated with individual deployments. This information is necessary to account for personnel deployed in support of disasters, to identify personnel with specific job skills and experience that may be required to support contingency missions tasked to VA under the VA/Department of Defense Contingency Plan or mission assignments from other Federal departments and agencies, and for the development of plans at the enterprise, network, and medical center level for utilization of VHA personnel in

support of disasters internal and external to VA.

RECORD SOURCE CATEGORIES:

The information will be provided by the individual VA employee and the VA medical facility (assigned facility) or other VA location at which the employee is employed. VHA OEM Headquarters will also provide information for updates of deployment status and availability. The Light Electronic Action Framework (LEAF) system is used to provide credentialing and privileging of health care providers and personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. Selected information (such as name, station and telephone numbers) may be disclosed to other Federal departments and agencies that have an interest in or obligation to track or otherwise audit transfer of funds to VA for reimbursement of tasks.

2. Statistical information and other data may be disclosed to Federal, SLTT government agencies to assist in disaster planning and after-action reports.

3. *Law Enforcement:* To a Federal, SLTT or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law, provided that the disclosure is limited to information that, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature. The disclosure of the names and addresses of Veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

4. Disclosure may be made to any source, such as a police department or the Federal Bureau of Investigation, from which additional information is requested to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested such as DEMPS, Clinical Deployment Team, Telehealth Emergency Management, or other VHA personnel present at a crime scene caused by terrorists.

5. Disclosure may be made to an agency in the executive, legislative, or judicial branch or the District of Columbia Government in response to its request, or at the initiation of VA, for information in connection with the selection of an employee for the deployment and future training of an individual, the letting of a contract, the issuance of a license, grant or other benefits by the requesting agency, or the lawful statutory, administrative or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's deployment/Federal Response Framework needs.

6. *Congress:* To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

7. *National Archives and Records Administration (NARA):* To NARA in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.

8. *State Licensing Boards, for Licensing:* To a Federal agency, a state or local government licensing board, the Federation of State Medical Boards or a similar non-governmental entity that maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications or registration necessary to practice an occupation, profession or specialty, to inform such non-governmental entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal Agency. These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes.

9. *The Joint Commission, for Accreditation:* To survey teams of The Joint Commission, College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with which VA has a contract or agreement to conduct such reviews, as relevant and necessary for the purpose of program review or the seeking of accreditation or certification.

10. *Data Breach Response and Remediation, for Another Federal Agency:* To another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government or national security, resulting from a suspected or confirmed breach.

11. *Department of Justice (DoJ), Litigation, Administrative Proceeding:* To DoJ, or in a proceeding before a court, adjudicative body or other administrative body before which VA is authorized to appear, when:

(a) VA or any component thereof;

(b) Any VA employee in their official capacity;

(c) Any VA employee in their individual capacity where DoJ has agreed to represent the employee; or

(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components, is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings.

12. Information on deployment to Federal/VHA emergencies, performance, or other personnel-related material may be disclosed to any facility with which there is, or there is proposed to be, an affiliation, sharing agreement, contract or similar arrangement, for purposes of establishing, maintaining or expanding any such relationship.

13. Information concerning a health care provider's professional qualifications and clinical privileges may be disclosed to a VA/emergency disaster-served client patient, or the representative or guardian of a patient who, due to physical or mental incapacity, lacks sufficient understanding or legal capacity to make decisions concerning his or her medical care, who is receiving or contemplating receiving medical or other patient care services from the provider when the information is needed by the patient or the patient's representative or guardian in order to make a decision related to the initiation of treatment, continuation or discontinuation of treatment, or receiving a specific treatment that is proposed or planned by the provider. Disclosure will be limited to information concerning the health care provider's professional qualifications (professional education, training and current licensure/certification status), professional employment history and current clinical privileges.

14. *Unions:* To officials of labor organizations recognized under 5 U.S.C. chapter 71(b)(4) when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices and matters affecting working conditions.

15. Information may be disclosed to the VA-appointed representative of an employee of all notices, determinations, decisions or other written communications issued to the employee in connection with an examination ordered by VA under medical evaluation (formerly fitness-for-duty) examination procedures or Department-filed disability retirement procedures.

16. *Merit Systems Protection Board (MSPB):* To the MSPB and the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

17. *Equal Employment Opportunity Commission (EEOC):* To the EEOC in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs or other functions of the Commission as authorized by law.

18. *Federal Labor Relations Authority (FLRA):* To the FLRA in connection with: The investigation and resolution of allegations of unfair labor practices, the resolution of exceptions to arbitration awards when a question of material fact is raised; matters before the Federal Service Impasses Panel; and the investigation of representation petitions and the conduct or supervision of representation elections.

19. *Contractors:* To contractors, grantees, experts, consultants, students and others performing or working on a contract, service, grant, cooperative agreement or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.

20. *Federal Agencies, Fraud and Abuse:* To other Federal agencies to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

21. *Data Breach Response and Remediation, for VA:* To appropriate agencies, entities and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs and operations), the Federal Government or national security; and (3) the disclosure made to such agencies, entities or persons reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize or remedy such harm.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated records are maintained at all levels of management outlined in system location. Automated information is stored in this database.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system are retrieved by the name, professional title, VISN, home station, professional specialty, job position title, etc., of the individuals on whom they are maintained.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

An automated database of deployable personnel will be maintained by VHA OEM. If an individual transfers to another VA facility location, the individual's data will be reassigned within the system to the new location. Records in this system are retained and disposed of in accordance with the schedule approved by the Archivist of the United States, VHA Records Control Schedule 10–1, Item Number 1270.1.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

1. Access to VA working and storage areas in VA health care facilities are restricted to VA employees on a need-to-know basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA file areas are locked after normal duty hours, and the health care facilities are protected from outside access by the VA Police Service, Federal Protective Service or other security personnel.

2. All tiers of the VHA PIMS application stack are hosted in a highly available, resilient and redundant virtual hosting environment. The internet connection is provided through the Department of Energy's Energy Science Network (ES.NET), managed by ORAU under a DOE Authority to Operate (ATO). As part of the ATO, VHA PIMS has been built in accordance with applicable Federal Information Security Management Act and National Institute of Standards and Technology (NIST) security and privacy control requirements for Federal information systems with implementation of all baseline security controls commensurate with the Federal Information Processing Standard 199 system security categorization. ORAU handles data in PIMS in accordance with the appropriate NIST classification.

RECORD ACCESS PROCEDURES:

Individuals seeking information on the existence and content of records in this system pertaining to them should contact the system manager in writing as indicated above, or the individuals may write, call or visit the VA facility location where they made application for employment or are (or were) employed. A request for access to records must contain the requester's full name, address, telephone number, be signed by the requester, and describe the records sought in sufficient detail to enable VA personnel to locate them with a reasonable amount of effort.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend records in this system pertaining to them should contact the system manager in writing as indicated above. A request to contest or amend records must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record.

NOTIFICATION PROCEDURES:

Generalized notice is provided by the publication of this notice. For specific notice, see Record Access Procedure, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

65 FR 25531 (May 2, 2000); 75 FR 4458 (January 27, 2010).

[FR Doc. 2023–08710 Filed 4–24–23; 8:45 am]

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Part II

Environmental Protection Agency

40 CFR Parts 60 and 63

New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA–HQ–OAR–2022–0730; FRL–9327–01–OAR]

RIN 2060–AV71

New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing amendments to the New Source Performance Standards (NSPS) that apply to the Synthetic Organic Chemical Manufacturing Industry (SOCMI) and to the National Emission Standards for Hazardous Air Pollutants (NESHAP) that apply to the SOCMI (more commonly referred to as the Hazardous Organic NESHAP or HON) and Group I and II Polymers and Resins Industries (P&R I and P&R II). The EPA is proposing decisions resulting from the Agency's technology review of the HON, P&R I, and P&R II, and its eight-year review of the NSPS that apply to the SOCMI. The EPA is also proposing amendments to the NSPS for equipment leaks of volatile organic compounds (VOC) in SOCMI based on its reconsideration of certain issues raised in an administrative petition for reconsideration. Furthermore, the EPA is proposing to strengthen the emission standards for ethylene oxide (EtO) emissions and chloroprene emissions after considering the results of a risk assessment for the HON and Neoprene Production processes subject to P&R I. Lastly, the EPA is proposing to remove exemptions from standards for periods of startup, shutdown, and malfunction (SSM), to add work practice standards for such periods where appropriate, and to add provisions for electronic reporting. We estimate that the proposed amendments to the NESHAP would reduce hazardous air pollutants (HAP) emissions (excluding EtO and chloroprene) from the SOCMI, P&R I, and P&R II sources by approximately 1,123 tons per year (tpy), reduce EtO emissions from HON processes by approximately 58 tpy, and reduce chloroprene emissions from Neoprene Production processes in P&R I by approximately 14 tpy. We also estimate that these proposed amendments to the NESHAP will reduce excess emissions of HAP from flares in the SOCMI and P&R I source categories by an additional 4,858 tpy. Lastly, we estimate that the proposed amendments to the NSPS would reduce VOC emissions from the SOCMI source category by approximately 1,609 tpy.

DATES:

Comments. Comments must be received on or before June 26, 2023. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before May 25, 2023.

Public hearing: The EPA will hold a virtual public hearing on May 16, 2023. See **SUPPLEMENTARY INFORMATION** for information on the public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2022–0730, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2022–0730 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2022–0730.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2022–0730, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Bouchard, Sector Policies and Programs Division (E143–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4036; and email address: *bouchard.andrew@epa.gov.*

SUPPLEMENTARY INFORMATION:

Participation in virtual public hearing. The public hearing will be held via virtual platform on May 16, 2023. The hearing will convene at 11:00 a.m. Eastern Time (ET) and will conclude at 7:00 p.m. ET. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are not additional speakers. The EPA will announce further details on the virtual public hearing website at *https://www.epa.gov/stationary-sources-air-pollution/synthetic-organic-chemical-manufacturing-industry-organic-national, https://www.epa.gov/stationary-sources-air-pollution/group-i-polymers-and-resins-national-emission-standards-hazardous,* and *https://www.epa.gov/stationary-sources-air-pollution/epoxy-resins-production-and-non-nylon-polyamides-national-emission.* If the EPA receives a high volume of registrations for the public hearing, we may continue the public hearing on May 17, 2023.

The EPA will begin pre-registering speakers for the hearing no later than 1 business day following the publication of this document in the **Federal Register**. The EPA will accept registrations on an individual basis. To register to speak at the virtual hearing, please use the online registration form available at any of the following websites: *https://www.epa.gov/stationary-sources-air-pollution/synthetic-organic-chemical-manufacturing-industry-organic-national, https://www.epa.gov/stationary-sources-air-pollution/group-i-polymers-and-resins-national-emission-standards-hazardous,* or *https://www.epa.gov/stationary-sources-air-pollution/epoxy-resins-production-and-non-nylon-polyamides-national-emission;* or contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov.* The last day to pre-register to speak at the hearing will be May 10, 2023. Prior to the hearing, the EPA will post a general agenda that will list pre-registered speakers in approximate order at: *https://www.epa.gov/stationary-sources-air-pollution/synthetic-organic-chemical-manufacturing-industry-organic-national, https://www.epa.gov/stationary-sources-air-pollution/group-i-polymers-and-resins-national-emission-standards-hazardous,* and *https://www.epa.gov/stationary-sources-air-pollution/epoxy-resins-production-and-*

non-nylon-polyamides-national-emission.

The 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 4 minutes to provide oral testimony. The EPA encourages commenters to submit a copy of their oral testimony as written comments to the rulemaking docket.

The 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 testimony 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/stationary-sources-air-pollution/synthetic-organic-chemical-manufacturing-industry-organic-national, https://www.epa.gov/stationary-sources-air-pollution/group-i-polymers-and-resins-national-emission-standards-hazardous,* and *https://www.epa.gov/stationary-sources-air-pollution/epoxy-resins-production-and-non-nylon-polyamides-national-emission.* While the EPA expects the hearing to go forward as set forth above, please monitor these websites or contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov* to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or a special accommodation such as audio description, please pre-register for the hearing with the public hearing team and describe your needs by May 2, 2023. The EPA may not be able to arrange accommodations without advanced notice.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2022–0730. All documents in the docket are listed in *https://www.regulations.gov/.* Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. With the exception of such material, publicly available docket materials are available electronically in *https://www.regulations.gov/* or in hard copy at the EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Avenue NW, Washington, DC. 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 EPA Docket Center is (202) 566–1742.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2022–0730. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov/,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit electronically to *https://www.regulations.gov/* any information that you consider to be CBI or other information whose disclosure is restricted by statue. This type of information should be submitted as discussed below.

The EPA may publish any comment received to its public docket. 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.*

The *https://www.regulations.gov/* website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov/,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov/.* Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, note the docket ID, mark the outside of the digital storage media as CBI, and identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI and note the docket ID. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol, or other online file sharing services (*e.g.,* Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the Office of Air Quality Planning and Standards (OAQPS) CBI Office at the email address *oaqpscbi@epa.gov* and, as described above, should include clear CBI markings and note the docket ID. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email *oaqpscbi@epa.gov* to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2022–0730. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

Preamble acronyms and abbreviations. Throughout this preamble the use of ''we,'' ''us,'' or ''our'' is intended to refer to the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

ACS American Community Survey
ADAF age-dependent adjustment factor
AEGL acute exposure guideline levels
AERMOD American Meteorological Society/EPA Regulatory Model dispersion modeling system
AIHA American Industrial Hygiene Association
AMEL alternative means of emission limitation
APCD air pollution control device
ATSDR Agency for Toxic Substances and Disease Registry
1–BP 1-bromopropane
BAAQMD Bay Area Air Quality Management District
BACT Best Available Control Technology
BLR basic liquid epoxy resins
BPT benefit per-ton
BSER best system of emissions reduction
BTU British thermal units
CAA Clean Air Act
CBI Confidential Business Information
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CFR Code of Federal Regulations
CMAS Chemical Manufacturing Area Sources
CMPU chemical manufacturing process unit
CO carbon monoxide
CO_2 carbon dioxide
EAV equivalent annual value
ECHO Enforcement and Compliance History Online
EFR external floating roof
EIS Emission Information System
EJ environmental justice
EMACT Ethylene Production MACT
EPA Environmental Protection Agency
EPPU elastomer product process unit
ERPG emergency response planning guidelines
ERT Electronic Reporting Tool
EtO Ethylene Oxide
FID flame ionization detector
GACT generally available control technologies
HAP hazardous air pollutant(s)
HCl hydrochloric acid
HEM Human Exposure Model
HF hydrofluoric acid
HON Hazardous Organic NESHAP
HQ hazard quotient
HQ_{REL} hazard quotient reference exposure level
HRVOC highly reactive volatile organic compound
ICR information collection request
IFR internal floating roof
IRIS Integrated Risk Information System
ISA Integrated Science Assessment
ISO International Standards Organization
km kilometer
kPa kilopascals
LAER Lowest Achievable Emission Rate
lb/hr pound per hour
LDAR leak detection and repair
LDSN leak detection sensor network
LEL lower explosive limit
MACT maximum achievable control technology
MPGF multi-point ground flare
MIR maximum individual lifetime [cancer] risk
MON Miscellaneous Organic Chemical Manufacturing NESHAP
MTVP maximum true vapor pressure
NAAQS National Ambient Air Quality Standard
NAICS North American Industry Classification System
NEI National Emissions Inventory
NESHAP national emission standards for hazardous air pollutants
NHVcz net heating value in the combustion zone gas
NHVdil net heating value dilution parameter
NHVvg net heating value in the vent gas
NOAEL No Observed Adverse Effects Level
NO_X nitrogen oxides
N_2O nitrous oxide
NRDC Natural Resources Defense Council
NSPS new source performance standards
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OAR Office of Air and Radiation
OECA Office of Enforcement and Compliance Assurance's
OEL open-ended valves or lines
OGI optical gas imaging
OLD Organic Liquids Distribution
OMB Office of Management and Budget
OSHA Occupational Safety and Health Administration
P&R I Group I Polymers and Resins NESHAP
P&R II Group II Polymers and Resins NESHAP
PDF portable document format
PM2.5 particulate matter 2.5
POM polycyclic organic matter
ppm parts per million
ppmv parts per million by volume
ppmw parts per million by weight
PRA Paperwork Reduction Act
psig pounds per square inch gauge
PRD pressure relief devices
PV present value
RACT Reasonably Available Control Technology
RDL representative detection limit
REL Reference Exposure Level
RFA Regulatory Flexibility Act
RfC reference concentration
RIA Regulatory Impact Analysis
RTR Risk and Technology Reviews
SCAQMD South Coast Air Quality Management District
scmm standard cubic meter per minute
scf standard cubic foot
SOCMI Synthetic Organic Chemical Manufacturing Industry
SO_2 sulfur dioxide
SSM startup, shutdown, and malfunction
TAC Texas Administrative Code
TCEQ Texas Commission on Environmental Quality
TOC total organic carbon
TOSHI target organ-specific hazard index
tpy tons per year
TRE total resource effectiveness
TRIM Total Risk Integrated Methodology
UF uncertainty factor
UMRA Unfunded Mandates Reform Act
UPL upper prediction limit
URE unit risk estimate
U.S.C. United States Code
USGS U.S. Geological Survey
VOC volatile organic compound(s)
WSR wet strength resins

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I. General Information

A. Executive Summary

1. Purpose of the Regulatory Action

The source categories that are the subject of this proposal are the SOCMI and various polymers and resins source categories. The SOCMI source category includes chemical manufacturing processes producing commodity chemicals while the polymers and resins source categories covered in this action include elastomers production processes and resin production processes that use epichlorohydrin feedstocks (see sections I.B and II.B of this preamble for detailed information about these source categories). The EPA has previously promulgated maximum achievable control technology (MACT) standards for certain processes in the SOCMI source category in the HON rulemaking at 40 CFR part 63, subparts F, G, and H. In 1994, the EPA finalized MACT standards in subparts F, G, and H for SOCMI processes (59 FR 19454),[1] and conducted a residual risk and technology review for these NESHAP in 2006 (71 FR 76603). In 1995, the EPA finalized MACT standards in P&R II (40 CFR part 63, subpart W) for epoxy resin and non-nylon polyamide resin manufacturing processes (60 FR 12670) and completed a residual risk and technology review for these standards in 2008 (73 FR 76220). In 1996, the EPA finalized MACT standards in P&R I (40 CFR part 63, subpart U) for elastomer manufacturing processes in the SOCMI source category (61 FR 46906) and completed residual risk and technology reviews for these standards in 2008 and 2011 (73 FR 76220 and 76 FR 22566).

The EPA has also promulgated NSPS for certain processes in the SOCMI source category. In 1983, the EPA finalized NSPS (40 CFR part 60, subpart VV) for equipment leaks of VOC in SOCMI (48 FR 48328). In 1990, the EPA finalized NSPS (40 CFR part 60, subparts III and NNN) for VOC from air oxidation unit processes and distillation operations (55 FR 26912 and 55 FR 26931). In 1993, the EPA finalized NSPS (40 CFR part 60, subpart RRR) for VOC from reactor processes (58 FR 45948). In 2007, the EPA promulgated NSPS (40 CFR part 60, subpart VVa) for VOC from certain equipment leaks (72 FR 64883), which reflects the EPA's review and revision of the standards in 40 CFR part 60, subpart VV.

The statutory authority for this action is sections 111, 112, 301(a)(1), and 307(d)(7)(B) of the Clean Air Act (CAA). Section 111(b)(1)(B) of the CAA requires the EPA to promulgate standards of performance for new sources in any category of stationary sources that the Administrator has listed pursuant to 111(b)(1)(A). Section 111(a)(1) of the CAA provides that these performance standards are to ''reflect[ ] the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.'' We refer to this level of control as the best system of emission reduction or ''BSER.'' Section 111(b)(1)(B) of the CAA requires the EPA to ''at least every 8 years, review and, if appropriate, revise'' the NSPS.

For NESHAP, CAA section 112(d)(2) requires the EPA to establish MACT standards for listed categories of major sources of HAP. Section 112(d)(6) of the CAA requires the EPA to review standards promulgated under CAA section 112, and revise them ''as necessary (taking into account developments in practices, processes, and control technologies),'' no less often than every 8 years following promulgation of those standards. This is referred to as a ''technology review'' and is required for all standards established under CAA section 112. Section 112(f) of the CAA requires the EPA to assess the risk to public health remaining after the implementation of MACT emission standards promulgated under CAA section 112(d)(2). If the standards for a source category do not provide ''an ample margin of safety to protect public health,'' the EPA must promulgate health-based standards for that source category to further reduce risk from HAP emissions.

Section 301(a)(1) of the CAA authorizes the Administrator to prescribe such regulations as are necessary to carry out his functions under the CAA. Section 307(d)(7)(B) of the CAA requires the reconsideration of a rule only if the person raising an objection to the rule can demonstrate that it was impracticable to raise such objection during the period for public comment or if the grounds for the objection arose after the comment period (but within the time specified for judicial review), and if the objection is of central relevance to the outcome of the rule.

The proposed new NSPS for SOCMI equipment leaks, air oxidation unit processes, distillation operations, and reactor processes (*i.e.,* NSPS subparts VVb, IIIa, NNNa, and RRRa, respectively) are based on the Agency's review of the current NSPS (subparts VVa, III, NNN, and RRR) pursuant to CAA section 111(b)(1)(B), which requires that the EPA review the NSPS every eight years and, if appropriate, revise. In addition, the EPA is proposing amendments to the NSPS for equipment leaks of VOC in SOCMI based on its reconsideration of certain aspects of subparts VV and VVa that were raised in an administrative petition and of which the Agency has granted reconsideration pursuant to section 307(d)(7)(B) of the CAA. These proposed amendments are primarily included in the new NSPS subpart VVb; the EPA is not proposing to make these changes in subparts VV and VVa because, in light of the time that has passed since the promulgation of these two subparts, the EPA finds it inappropriate to now change the obligations of sources subject to these subparts after all these years. The proposed amendments to the HON (NESHAP subparts F, G, H, and I), P&R I (NESHAP subpart U), and P&R II (NESHAP subpart W) are based on the Agency's review of the current NESHAP (subparts F, G, H, I, U, and W) pursuant to CAA section 112(d).

Also, due to the development of the EPA's Integrated Risk Information System (IRIS) inhalation unit risk estimate (URE) for chloroprene in 2010, the EPA conducted a CAA section 112(f) risk review for the SOCMI source category and Neoprene Production source category. In the first step of the CAA section 112(f)(2) determination of risk acceptability for this rulemaking, the use of the 2010 chloroprene risk value resulted in the EPA identifying

[1] Around the same time, the EPA set MACT standards for equipment leaks from certain non-SOCMI processes at chemical plants regulated under 40 CFR part 63, subpart I (59 FR 19587).

unacceptable residual cancer risk caused by chloroprene emissions from affected sources producing neoprene subject to P&R I.[2] Consequently, the proposed amendments to P&R I address the EPA review of additional control technologies, beyond those analyzed in the technology review conducted for P&R I, for one affected source producing neoprene and contributing to unacceptable risk. Additionally, in 2016, the EPA updated the IRIS inhalation URE for EtO. In the first step of the CAA section 112(f)(2) determination of risk acceptability for this rulemaking, the use of the updated 2016 EtO risk value resulted in the EPA identifying unacceptable residual cancer risk driven by EtO emissions from HON processes. Consequently, the proposed amendments to the HON also address the EPA review of additional control technologies, beyond those analyzed in the technology review conducted for the HON, focusing on emissions sources emitting EtO that contribute to unacceptable risk.

2. Summary of the Major Provisions of the Regulatory Action in Question

The most significant amendments that we are proposing are described briefly below. However, all of our proposed amendments, including amendments to remove exemptions for periods of SSM, are discussed in detail with rationale in section III of this preamble.

a. HON

We are proposing amendments to the HON for heat exchange systems, process vents, storage vessels, transfer racks, wastewater, and equipment leaks.

i. NESHAP Subpart F

As detailed in section II.B.1.a of this preamble, NESHAP subpart F contains provisions to determine which chemical manufacturing processes at a facility are subject to the HON, monitoring requirements for HAP (*i.e.,* HAP listed in Table 4 of NESHAP subpart F) that may leak into cooling water from heat exchange systems, and requirements for maintenance wastewater. For NESHAP subpart F, we are proposing:

- Compliance dates for all of the proposed HON requirements (see proposed 40 CFR 63.100(k)(10) through (12); and section III.F of this preamble).
- to move all of the definitions from NESHAP subparts G and H (*i.e.,* 40 CFR 63.111 and 40 CFR 63.161, respectively) into the definition section of NESHAP subpart F (see proposed 40 CFR 63.101; and section III.E.5.a of this preamble).
- a new definition for ''in ethylene oxide service'' (for equipment leaks, heat exchange systems, process vents, storage vessels, and wastewater) (see proposed 40 CFR 63.101; and section III.B.2.a of this preamble).
- new operating and monitoring requirements for flares; and a requirement that owners and operators can send no more than 20 tons of EtO to all of their flares combined in any consecutive 12-month period (see proposed 40 CFR 63.108; and section III.B.2.a.vi of this preamble).
- sampling and analysis procedures for owners and operators to demonstrate that process equipment does, or does not, meet the proposed definition of being ''in ethylene oxide service'' (see proposed 40 CFR 63.109; and section III.B.2.a.vii of this preamble).

For heat exchange systems, we are proposing:

- To require owners or operators to use the Modified El Paso Method and repair leaks of total strippable hydrocarbon concentration (as methane) in the stripping gas of 6.2 parts per million by volume (ppmv) or greater (see proposed 40 CFR 63.104(g) through (j); and section III.C.1 of this preamble).
- to require owners or operators to conduct more frequent leak monitoring (weekly instead of quarterly) for heat exchange systems in EtO service and repair leaks within 15 days from the sampling date (in lieu of the current 45-day repair requirement after receiving results of monitoring indicating a leak in the HON), and delay of repair would not be allowed (see proposed 40 CFR 63.104(g)(6) and (h)(6); and section III.B.2.a.iii of this preamble).
- that the current leak monitoring requirements for heat exchange systems at 40 CFR 63.104(b) may be used in limited instances in lieu of using the Modified El Paso Method for heat exchange systems cooling process fluids that will remain in the cooling water if a leak occurs (see proposed 40 CFR 63.104(l); and section III.C.1 of this preamble).

ii. NESHAP Subpart G

As detailed in section II.B.1.b of this preamble, NESHAP subpart G contains requirements for process vents, storage vessels, transfer racks, wastewater streams, and closed vent systems.

For process vents, we are proposing:

- To remove the 50 ppmv and 0.005 standard cubic meter per minute (scmm) Group 1 process vent thresholds from the Group 1 process vent definition, and instead require owners and operators of process vents that emit greater than or equal to 1.0 pound per hour (lb/hr) of total organic HAP to reduce emissions of organic HAP using a flare meeting the proposed operating and monitoring requirements for flares in NESHAP subpart F; or reduce emissions of total organic HAP or total organic compounds (TOC) by 98 percent by weight or to an exit concentration of 20 ppmv, whichever is less stringent (see proposed 40 CFR 63.101 and 40 CFR 63.113(a)(1) and (2); and section III.C.3.a of this preamble).
- to remove the total resource effectiveness (TRE) concept in its entirety (see proposed 40 CFR 63.113(a)(4); and section III.C.3.a of this preamble).
- to add an emission standard of 0.054 nanograms per dry standard cubic meter (ng/dscm) at 3 percent oxygen (toxic equivalency basis) for dioxins and furans from chlorinated process vents (see proposed 40 CFR 63.113(a)(5); and section III.D.5. of this preamble).
- that owners and operators reduce emissions of EtO from process vents in EtO service by either: (1) Venting emissions through a closed-vent system to a control device that reduces EtO by greater than or equal to 99.9 percent by weight, to a concentration less than 1 ppmv for each process vent, or to less than 5 lb/yr for all combined process vents; or (2) venting emissions through a closed-vent system to a flare meeting the proposed operating and monitoring requirements for flares in NESHAP subpart F (see proposed 40 CFR 63.113(j), 40 CFR 63.108, and 40 CFR 63.124; and section III.B.2.a.i of this preamble).[3]
- a work practice standard for maintenance vents requiring that, prior to opening process equipment to the atmosphere, the equipment must either: (1) Be drained and purged to a closed system so that the hydrocarbon content is less than or equal to 10 percent of the lower explosive limit (LEL); (2) be opened and vented to the atmosphere only if the 10-percent LEL cannot be demonstrated and the pressure is less than or equal to 5 pounds per square inch gauge (psig), provided there is no active purging of the equipment to the atmosphere until the LEL criterion is

[2] As discussed further in section III.B of this preamble, chloroprene emissions from HON processes do not on their own present unacceptable cancer risk.

[3] We are also proposing to remove the option to allow use of a design evaluation in lieu of performance testing to demonstrate compliance for controlling various emission sources in ethylene oxide service. In addition, owners or operators that choose to control emissions with a non-flare control device would be required to conduct an initial performance test on each control device in ethylene oxide service to verify performance at the required level of control, and would also be required to conduct periodic performance testing on non-flare control devices in ethylene oxide service every 5 years (see proposed 40 CFR 63.124).

met; (3) be opened when there is less than 50 lbs of VOC that may be emitted to the atmosphere; or (4) for installing or removing an equipment blind, depressurize the equipment to 2 psig or less and maintain pressure of the equipment where purge gas enters the equipment at or below 2 psig during the blind flange installation, provided none of the other proposed work practice standards can be met (see proposed 40 CFR 63.113(k); and section III.D.4.a of this preamble).

• that owners and operators of process vents in EtO service would not be allowed to use the proposed maintenance vent work practice standards; instead, owners and operators would be prohibited from releasing more than 1.0 ton of EtO from all maintenance vents combined in any consecutive 12-month period (see proposed 40 CFR 63.113(k)(4); and section III.B.2.a.v of this preamble).

For storage vessels, we are proposing:

• That owners and operators reduce emissions of EtO from storage vessels in EtO service by either: (1) Venting emissions through a closed-vent system to a control device that reduces EtO by greater than or equal to 99.9 percent by weight or to a concentration less than 1 ppmv for each storage vessel vent; or (2) venting emissions through a closed-vent system to a flare meeting the proposed operating and monitoring requirements for flares in NESHAP subpart F (see proposed 40 CFR 63.119(a)(5), 40 CFR 63.108, and 40 CFR 63.124; and section III.B.2.a.i of this preamble).[4]

• a work practice standard to allow storage vessels to be vented to the atmosphere once a storage vessel degassing concentration threshold is met (*i.e.,* less than 10 percent of the LEL) and all standing liquid has been removed from the vessel to the extent practicable (see proposed 40 CFR 63.119(a)(6); and section III.D.4.b of this preamble).

• to define pressure vessel and remove the exemption for ''pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere'' from the definition of storage vessel (see proposed 40 CFR 63.101); and require initial and annual performance testing using EPA Method 21 of 40 CFR part 60, appendix A–7 to demonstrate no detectable emissions (*i.e.,* would be required to meet a leak definition of 500 parts per million (ppm) at each point on the pressure vessel where total organic HAP could potentially be emitted) (see proposed 40 CFR 63.119(a)(7); and section III.D.6 of this preamble).

• to require all openings in an internal floating roof (IFR) (except those for automatic bleeder vents (vacuum breaker vents), rim space vents, leg sleeves, and deck drains) be equipped with a deck cover; and the deck cover would be required to be equipped with a gasket between the cover and the deck (see proposed 40 CFR 63.119(b)(5)(ix); and section III.C.2 of this preamble).

• controls for guidepoles for all storage vessels equipped with an IFR (see proposed 40 CFR 63.119(b)(5)(x), (xi), and (xii); and section III.C.2 of this preamble).

• a work practice standard that would apply during periods of planned routine maintenance of a control device, fuel gas system, or process equipment that is normally used for compliance with the storage vessel emissions control requirements; owners and operators would not be permitted to fill the storage vessel during these periods (such that the vessel would emit HAP to the atmosphere for a limited amount of time due to breathing losses only while working losses are controlled) (see proposed 40 CFR 63.119(e)(7); and section III.D.4.c of this preamble).

• to revise the Group 1 storage capacity criterion (for storage vessels at existing sources) from between 75 cubic meters (m^3) and 151 m^3 to between 38 m^3 and 151 m^3 (see proposed Table 5 to subpart G; and section III.C.2 of this preamble).

• to revise the Group 1 stored-liquid maximum true vapor pressure (MTVP) of total organic HAP threshold (for storage vessels at existing sources) from greater than or equal to 13.1 kilopascals (kPa) to greater than or equal to 6.9 kPa (see proposed Table 5 to subpart G; and section III.C.2 of this preamble).

For transfer racks, we are proposing:

• To remove the exemption for transfer operations that load ''at an operating pressure greater than 204.9 kilopascals'' from the definition of transfer operation (see proposed 40 CFR 63.101; and section III.D.8 of this preamble).

For wastewater streams, we are proposing:

• To revise the Group 1 wastewater stream threshold to include wastewater streams in EtO service (*i.e.,* wastewater streams with total annual average concentration of EtO greater than or equal to 1 ppm by weight at any flow rate) (see proposed 40 CFR 63.132(c)(1)(iii) and (d)(1)(ii); and section III.B.2.a.iv of this preamble).

• to prohibit owners and operators from injecting wastewater into or disposing of water through any heat exchange system in a chemical manufacturing process unit (CMPU) meeting the conditions of 40 CFR 63.100(b)(1) through (3) if the water contains any amount of EtO, has been in contact with any process stream containing EtO, or the water is considered wastewater as defined in 40 CFR 63.101 (see proposed 40 CFR 63.104(k); and section III.B.2.a.iv of this preamble).

For closed vent systems, we are proposing:

• That owners and operators may not bypass an air pollution control device (APCD) at any time (see proposed 40 CFR 63.114(d)(3), 40 CFR 63.127(d)(3), and 40 CFR 63.148(f)(4)), that a bypass is a violation, and that owners and operators must estimate and report the quantity of organic HAP released (see proposed 40 CFR 63.118(a)(5), 40 CFR 63.130(a)(2)(iv), 40 CFR 63.130(b)(3), 40 CFR 63.130(d)(7), and 40 CFR 63.148(i)(3)(iii) and (j)(4); and section III.D.3 of this preamble).

iii. NESHAP Subparts H and I

As detailed in sections II.B.1.c and II.B.1.d of this preamble, NESHAP subparts H and I contain requirements for equipment leaks. Also, due to space limitations in the HON, we are proposing fenceline monitoring (*i.e.,* monitoring along the perimeter of the facility's property line) in NESHAP subpart H for all emission sources. For equipment leaks and fenceline monitoring, we are proposing:

• That all connectors in EtO service would be required to be monitored monthly at a leak definition of 100 ppm with no skip period, and delay of repair would not be allowed (see proposed 40 CFR 63.174(a)(3), (b)(3)(vi), and (g)(3), and 40 CFR 63.171(f); and section III.B.2.a.ii of this preamble).

• that all gas/vapor and light liquid valves in EtO service would be required to be monitored monthly at a leak definition of 100 ppm with no skip period, and delay of repairs would not be allowed (see proposed 40 CFR 63.168(b)(2)(iv) and (d)(5), and 40 CFR 63.171(f); and section III.B.2.a.ii of this preamble).

• that all light liquid pumps in EtO service would be required to be monitored monthly at a leak definition of 500 ppm, and delay of repairs would not be allowed (see proposed 40 CFR 63.163(a)(1)(iii), (b)(2)(iv), (c)(4), and (e)(7), and 40 CFR 63.171(f); and section III.B.2.a.ii of this preamble).

• a work practice standard for pressure relief devices (PRDs) that vent to the atmosphere that would require owners and operators to implement at least three prevention measures, perform root cause analysis and corrective action in the event that a PRD

[4] See footnote 3.

does release emissions directly to the atmosphere, and monitor PRDs using a system that is capable of identifying and recording the time and duration of each pressure release and of notifying operators that a pressure release has occurred (see proposed 40 CFR 63.165(e); and section III.D.2 of this preamble).

• that all surge control vessels and bottoms receivers would be required to meet the requirements we are proposing for process vents (see proposed 40 CFR 63.170(b); and section III.D.7 of this preamble).

• that owners and operators may not bypass an APCD at any time (see proposed 40 CFR 63.114(d)(3), 40 CFR 63.127(d)(3), and 40 CFR 63.148(f)(4)), that a bypass is a violation, and that owners and operators must estimate and report the quantity of organic HAP released (see proposed 40 CFR 63.118(a)(5), 40 CFR 63.130(a)(2)(iv), 40 CFR 63.130(b)(3), 40 CFR 63.130(d)(7), and 40 CFR 63.148(i)(3)(iii) and (j)(4); and section III.D.3 of this preamble).

• to add a fenceline monitoring standard that requires owners and operators to monitor for any of 6 specific HAP they emit (*i.e.,* benzene, 1,3-butadiene, ethylene dichloride, vinyl chloride, EtO, and chloroprene) and conduct root cause analysis and corrective action upon exceeding the annual average concentration action level set forth for each HAP (see proposed 40 CFR 63.184; and section III.C.7 of this preamble).

b. P&R I

As detailed in section II.B.2 of this preamble, P&R I (40 CFR part 63, subpart U) generally follows and refers to the requirements of the HON, with additional requirements for batch process vents. We are proposing amendments to P&R I for heat exchange systems, process vents, storage vessels, wastewater, and equipment leaks. For NESHAP subpart U, we are proposing:

• Compliance dates for all of the proposed P&R I requirements (see proposed 40 CFR 63.481(n) and (o); and section III.F of this preamble).

• new operating and monitoring requirements for flares (see proposed 40 CFR 63.508; and section III.D.1 of this preamble).

• removing provisions to assert an affirmative defense to civil penalties (see proposed 40 CFR 63.480(j)(4); and section III.E.2 of this preamble).

• to reference the same fenceline monitoring requirements that we are proposing in Subpart H for HON sources.

• sampling and analysis procedures for owners and operators of affected sources producing neoprene to demonstrate that process equipment does, or does not, meet the proposed definition of being ''in chloroprene service'' (see proposed 40 CFR 63.509; and section III.B.2.b.iv of this preamble).

• A facility-wide chloroprene emissions cap of 3.8 tpy in any consecutive 12-month period for all neoprene production emission sources (see proposed 40 CFR 63.483(a)(10); and section III.B.2.b.v of this preamble).

For heat exchange systems, we are proposing:

• To add the same requirements (except for EtO standards) listed in section I.A.2.a.i of this preamble that we are proposing for heat exchange systems subject to the HON to also apply to heat exchange systems subject to P&R I (see proposed 40 CFR 63.502(n)(7); and section III.C.1 of this preamble).

For continuous front-end process vents, we are proposing:

• That owners and operators reduce emissions of chloroprene from continuous front-end process vents in chloroprene service at affected sources producing neoprene by venting emissions through a closed-vent system to a non-flare control device that reduces chloroprene by greater than or equal to 99.9 percent by weight, to a concentration less than 1 ppmv for each process vent, or to less than 5 lb/yr for all combined process vents (see proposed 40 CFR 63.485(y), and 40 CFR 63.510; and sections III.B.2.b.i of this preamble).[5]

• to add the same requirements (except for EtO standards) listed in section I.A.2.a.ii of this preamble that we are proposing for process vents subject to the HON to also apply to continuous front-end process vents subject to P&R I (see proposed 40 CFR 63.482, 40 CFR 63.485(l)(6), (o)(6), (p)(5), and (x), 40 CFR 63.113(a)(1) and (2), 40 CFR 63.113(a)(4), 40 CFR 63.113(k), 40 CFR 63.114(a)(5)(v); and section III.C.3 of this preamble).

• that continuous front-end process vents in chloroprene service would not be allowed to use the proposed maintenance vent work practice standards; instead, owners and operators would be prohibited from releasing more than 1.0 ton of chloroprene from all maintenance vents combined in any consecutive 12-month period (see proposed 40 CFR 63.485(z); and section III.B.2.b.iii of this preamble).

• to add an emission standard of 0.054 ng/dscm at 3 percent oxygen (toxic equivalency basis) for dioxins and furans from chlorinated continuous front-end process vents (see proposed 40 CFR 63.485(x); and section III.D.5. of this preamble).

For batch front-end process vents, we are proposing:

• To remove the annual organic HAP emissions mass flow rate, cutoff flow rate, and annual average batch vent flow rate Group 1 process vent thresholds from the Group 1 batch front-end process vent definition (these thresholds are currently determined on an individual batch process vent basis). Instead, owners and operators of batch front-end process vents that release total annual organic HAP emissions greater than or equal to 4,536 kilograms per year (kg/yr) (10,000 pounds per year (lb/yr)) from all batch front-end process vents combined would be required to reduce emissions of organic HAP from these process vents using a flare meeting the proposed operating and monitoring requirements for flares; or reduce emissions of organic HAP or total organic carbon (TOC) by 90 percent by weight (or to an exit concentration of 20 ppmv if considered an ''aggregate batch vent stream'' as defined by the rule) (see proposed 40 CFR 63.482, 40 CFR 63.487I(1)(iv), 40 CFR 63.488(d)(2), (e)(4), (f)(2), and (g)(3); and section III.C.3 of this preamble).

• to add the same chloroprene standards that we are proposing for continuous front-end process for batch front-end process vents at affected sources producing neoprene (see proposed 40 CFR 63.487(j); and section III.B.2.b.i of this preamble).

• to add the same work practice standards that we are proposing for maintenance vents as described for HON to P&R I (see proposed 40 CFR 63.487(i); and section III.D.4.a of this preamble).

• that batch front-end process vents in chloroprene service would not be allowed to use the proposed maintenance vent work practice standards; instead, owners and operators would be prohibited from releasing more than 1.0 tons of chloroprene from all maintenance vents combined in any consecutive 12-month period (see proposed 40 CFR 63.487(i)(4); and section III.B.2.b.v of this preamble).

• to add an emission standard of 0.054 ng/dscm at 3 percent oxygen

[5] We are also proposing to remove the option to allow use of a design evaluation in lieu of performance testing to demonstrate compliance for controlling various emission sources in chloroprene service. In addition, owners or operators would be required to conduct an initial performance test on each non-flare control device in chloroprene service to verify performance at the required level of control, and would also be required to conduct periodic performance testing on non-flare control devices in chloroprene service every 5 years (see proposed 40 CFR 63.510).

(toxic equivalency basis) for dioxins and furans from chlorinated batch front-end process vents (see proposed 40 CFR 63.487(a)(3) and (b)(3); and section III.D.5. of this preamble).

For storage vessels, we are proposing:

• That owners and operators reduce emissions of chloroprene from storage vessels in chloroprene service at affected sources producing neoprene by venting emissions through a closed-vent system to a non-flare control device that reduces chloroprene by greater than or equal to 99.9 percent by weight or to a concentration less than 1 ppmv for each storage vessel vent (see proposed 40 CFR 63.484(u) and 40 CFR 63.510; and section III.B.2.b.i of this preamble).[6]

• to add the same requirements (except for EtO standards) listed in section I.A.2.a.ii of this preamble that we are proposing for storage vessels subject to the HON except the proposed requirements would apply to storage vessels subject to P&R I (see proposed 40 CFR 63.484(t); and section III.C.2 of this preamble).

For wastewater streams, we are proposing:

• To revise the Group 1 wastewater stream threshold to include wastewater streams in chloroprene service at affected sources producing neoprene (*i.e.,* wastewater streams with total annual average concentration of chloroprene greater than or equal to 10 parts per million by weight (ppmw) at any flow rate) (see proposed 40 CFR 63.501(a)(10)(iv); and section III.B.2.b.ii of this preamble).

• to prohibit owners and operators from injecting wastewater into or disposing of water through any heat exchange system in an elastomer product process unit (EPPU) if the water contains any amount of chloroprene, has been in contact with any process stream containing chloroprene, or the water is considered wastewater as defined in 40 CFR 63.482 (see proposed 40 CFR 63.502(n)(8); and section III.B.2.b.ii of this preamble).

For equipment leaks and fenceline monitoring, we are proposing:

• To add the same requirements (except for EtO standards) listed in section I.A.2.a.iii of this preamble that we are proposing for equipment leaks subject to the HON except the proposed requirements would apply to equipment leaks subject to P&R I (see proposed 40 CFR 63.502(a)(1) through (a)(6); and sections III.D.2 and III.D.3 of this preamble).

• to cross-reference P&R I facilities to the same fenceline monitoring standard in the HON (see proposed 40 CFR 63.184) that requires owners and operators to monitor for any of 6 specific HAP they emit (*i.e.,* benzene, 1,3-butadiene, ethylene dichloride, vinyl chloride, EtO, and chloroprene) and conduct root cause analysis and corrective action upon exceeding the annual average concentration action level set forth for each HAP (see section III.C.7 of this preamble).

c. P&R II

The most significant amendments that we are proposing for P&R II (40 CFR part 63, subpart W) are to add requirements for heat exchange systems (see proposed 40 CFR 63.523(d) and 40 CFR 63.524(c); and section III.D.9 of this preamble) and require owners and operators of wet strength resins (WSR) sources to comply with both the equipment leak standards in the HON and the HAP emissions limitation for process vents, storage tanks, and wastewater systems (see proposed 40 CFR 63.524(a)(3) and (b)(3); and section III.D.10 of this preamble). We are also proposing to add the same dioxin and furan emission standard of 0.054 ng/dscm at 3 percent oxygen (toxic equivalency basis) for chlorinated process vents as in the HON and P&R I (see proposed 40 CFR 63.523(e) (for process vents associated with each existing, new, or reconstructed affected basic liquid epoxy resins (BLR) source), 40 CFR 63.524(a)(3) (for process vents associated with each existing affected WSR source), and 40 CFR 63.524(b)(3) (for process vents associated with each new or reconstructed affected WSR source)).

d. NSPS Subparts III, NNN, and RRR

We are proposing to amend the applicability of NSPS subparts III, NNN, and RRR so that they would only apply to sources constructed, reconstructed, or modified on or before April 25, 2023. Affected facilities that are constructed, reconstructed, or modified after April 25, 2023 would be subject to the new proposed NSPS subparts IIIa, NNNa, and RRRa (see section A.2.e of this preamble).

e. NSPS Subparts IIIa, NNNa, and RRRa

Rather than comply with a TRE concept which is currently used in NSPS subparts III, NNN, and RRR, we are proposing in new NSPS subparts IIIa, NNNa, and RRRa to require owners and operators to reduce emissions of total organic carbon (TOC) (minus methane and ethane) from all vent streams of an affected facility (*i.e.,* SOCMI air oxidation unit processes, distillation operations, and reactor processes for which construction, reconstruction, or modification occurs after April 25, 2023) by 98 percent by weight or to a concentration of 20 ppmv on a dry basis corrected to 3 percent oxygen, whichever is less stringent, or combust the emissions in a flare meeting the same operating and monitoring requirements for flares that we are proposing for flares subject to the HON. We are also proposing to eliminate the relief valve discharge exemption from the definition of ''vent stream'' such that any relief valve discharge to the atmosphere of a vent stream is a violation of the emissions standard. In addition, we are proposing the same work practice standards for maintenance vents that we are proposing for HON process vents, and the same monitoring requirements that we are proposing for HON process vents for adsorbers that cannot be regenerated and regenerative adsorbers that are regenerated offsite (see section III.C.3.b of this preamble).

f. NSPS Subpart VVa

We are proposing to amend the applicability of the existing NSPS subpart VVa so that it would apply to only sources constructed, reconstructed, or modified after November 6, 2006, and on or before April 25, 2023. Affected facilities that are constructed, reconstructed, or modified after April 25, 2023 would be subject to the new proposed NSPS subpart VVb.

g. NSPS Subpart VVb

We are proposing in a new NSPS subpart VVb the same requirements in NSPS subpart VVa plus requiring that all gas/vapor and light liquid valves be monitored quarterly at a leak definition of 100 ppm and all connectors be monitored once every 12 months at a leak definition of 500 ppm (see section III.C.6.b of this preamble). For each of these two additional requirements, we are also proposing skip periods for good performance.

3. Costs and Benefits

Pursuant to E.O. 12866, the EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis titled *Regulatory Impact Analysis,* (referred to as the RIA in this document) is available in the docket, and is also briefly summarized in section VI of this preamble.

B. Does this action apply to me?

The source categories that are the subject of this proposal include the SOCMI source category (and whose facilities, sources and processes we often refer to as ''HON facilities,'' ''HON sources,'' and ''HON processes'' for purposes of the NESHAP) and several

[6] See footnote 5.

Polymers and Resins Production source categories covered in P&R I and P&R II (see section II.B of this preamble for detailed information about the source categories).[7] The North American Industry Classification System (NAICS) code for SOCMI facilities begins with 325, for P&R I is 325212, and for P&R II is 325211. The list of NAICS codes is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. The proposed standards, once promulgated, will be directly applicable to the affected sources and/or affected facilities. Federal, state, local, and tribal government entities would not be affected by this proposed action.

As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (see 57 FR 31576, July 16, 1992) and *Documentation for Developing the Initial Source Category List, Final Report* (see EPA–450/3–91–030, July 1992), the SOCMI source category is any facility engaged in ''manufacturing processes that produce one or more of the chemicals [listed] that either: (1) Use an organic HAP as a reactant or (2) produce an organic HAP as a product, co-product, by-product, or isolated intermediate.'' [8] In the development of NESHAP for this source category, the EPA considered emission sources associated with: equipment leaks (including leaks from heat exchange systems), process vents, transfer racks, storage vessels, and wastewater collection and treatment systems. The elastomer production source categories in P&R I and resins produced with epichlorohydrin feedstock in P&R II have many similar emission sources with SOCMI sources and are discussed further in section II.B of this preamble.

The EPA Priority List (40 CFR 60.16, 44 FR 49222, August 21, 1979) included ''Synthetic Organic Chemical Manufacturing'' [9] as a source category for which standards of performance were to be promulgated under CAA section 111. In the development of NSPS for this source category, the EPA considered emission sources associated with unit processes, storage and handling equipment, fugitive emission sources, and secondary sources.

C. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at *https://www.epa.gov/stationary-sources-air-pollution/synthetic-organic-chemical-manufacturing-industry-organic-national, https://www.epa.gov/stationary-sources-air-pollution/group-i-polymers-and-resins-national-emission-standards-hazardous,* and *https://www.epa.gov/stationary-sources-air-pollution/epoxy-resins-production-and-non-nylon-polyamides-national-emission.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at these same websites.

A memorandum showing the edits that would be necessary to incorporate the changes to: 40 CFR part 60, subparts VV, VVa, III, NNN, RRR; 40 CFR part 63, subparts F, G, H and I (HON), U (P&R I), and W (P&R II); and 40 CFR part 60, new subparts VVb, IIIa, NNNa, and RRRa proposed in this action are available in the docket (Docket ID No. EPA–HQ–OAR–2022–0730). Following signature by the EPA Administrator, the EPA also will post a copy of these documents to *https://www.epa.gov/stationary-sources-air-pollution/synthetic-organic-chemical-manufacturing-industry-organic-national, https://www.epa.gov/stationary-sources-air-pollution/group-i-polymers-and-resins-national-emission-standards-hazardous,* and *https://www.epa.gov/stationary-sources-air-pollution/epoxy-resins-production-and-non-nylon-polyamides-national-emission.*

II. Background

A. What is the statutory authority for this action?

1. NESHAP

The statutory authority for this action related to NESHAP is provided by sections 112 and 301 of the CAA, as amended (42 U.S.C. 7401 *et seq.*). Section 112 of the CAA establishes a two-stage regulatory process to develop standards for emissions of HAP from stationary sources. Generally, the first stage involves establishing technology-based standards and the second stage involves evaluating those standards that are based on MACT to determine whether additional standards are needed to address any remaining risk associated with HAP emissions. This second stage is commonly referred to as the ''residual risk review.'' In addition to the residual risk review, the CAA also requires the EPA to review standards set under CAA section 112 every 8 years and revise the standards as necessary taking into account any ''developments in practices, processes, and control technologies.'' This review is commonly referred to as the ''technology review.'' When the two reviews are combined into a single rulemaking, it is commonly referred to as the ''risk and technology review.'' The discussion that follows identifies the most relevant statutory sections and briefly explains the contours of the methodology used to implement these statutory requirements. A more comprehensive discussion appears in the document titled *CAA Section 112 Risk and Technology Reviews: Statutory Authority and Methodology,* in the docket for this rulemaking.

In the first stage of the CAA section 112 standard setting process, the EPA promulgates technology-based standards under CAA section 112(d) for categories of sources identified as emitting one or more of the HAP listed in CAA section 112(b). Sources of HAP emissions are either major sources or area sources, and CAA section 112 establishes different requirements for major source standards and area source standards. ''Major sources'' are those that emit or have the potential to emit 10 tpy or more of a single HAP or 25 tpy or more of any combination of HAP. All other sources are ''area sources.'' For major sources, CAA section 112(d)(2) provides that the technology-based NESHAP must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). These standards are commonly referred to as MACT standards. CAA section 112(d)(3) also establishes a minimum control level for MACT standards, known as the MACT ''floor.'' In certain instances, as provided in CAA section 112(h), the EPA may set work practice standards in lieu of numerical emission standards.

[7] P&R I includes nine listed elastomer production source categories (*i.e.,* Butyl Rubber Production, Epichlorohydrin Elastomers Production, Ethylene-Propylene Elastomers Production, Hypalon™ Production, Neoprene Production, Nitrile Butadiene Rubber Production, Polybutadiene Rubber Production, Polysulfide Rubber Production, and Styrene-Butadiene Rubber and Latex Production). P&R II includes two listed source categories that use epichlorohydrin feedstock (Epoxy Resins Production and Non-Nylon Polyamides Production).

[8] The original list of chemicals is located in Appendix A (beginning on page A–71) of EPA–450/3–91–030 dated July 1992. Alternatively, the most recent list of chemicals is documented in the HON applicability rule text at 40 CFR 63.100(b)(1) and (2). The original list of organic HAPs for the SOCMI source category is located in Table 3.1 of Section 3.0 of EPA–450/3–91–030.

[9] For readability, we also refer to this as the SOCMI source category for purposes of the NSPS.

The EPA must also consider control options that are more stringent than the floor. Standards more stringent than the floor are commonly referred to as beyond-the-floor standards. For area sources, CAA section 112(d)(5) gives the EPA discretion to set standards based on generally available control technologies or management practices (GACT standards) in lieu of MACT standards.

The second stage in standard-setting focuses on identifying and addressing any remaining (*i.e.,* ''residual'') risk pursuant to CAA section 112(f). For source categories subject to MACT standards, section 112(f)(2) of the CAA requires the EPA to determine whether promulgation of additional standards is needed to provide an ample margin of safety to protect public health or to prevent an adverse environmental effect. Section 112(d)(5) of the CAA provides that this residual risk review is not required for categories of area sources subject to GACT standards. Section 112(f)(2)(B) of the CAA further expressly preserves the EPA's use of the two-step approach for developing standards to address any residual risk and the Agency's interpretation of ''ample margin of safety'' developed in the *National Emissions Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants* (Benzene NESHAP) (54 FR 38044, September 14, 1989). The EPA notified Congress in the Residual Risk Report that the Agency intended to use the 1989 Benzene NESHAP approach in making CAA section 112(f) residual risk determinations (EPA–453/R–99–001, p. ES–11). The EPA subsequently adopted this approach in its residual risk determinations and the United States Court of Appeals for the District of Columbia Circuit upheld the EPA's interpretation that CAA section 112(f)(2) incorporates the approach established in the 1989 Benzene NESHAP. See *Natural Resources Defense Council (NRDC)* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008).

The approach incorporated into the CAA and used by the EPA to evaluate residual risk and to develop standards under CAA section 112(f)(2) is a two-step approach. In the first step, the EPA determines whether risks are acceptable. This determination ''considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime [cancer] risk (MIR) [10] of approximately 1 in 10 thousand.'' (54 FR 38045). If risks are unacceptable, the EPA must determine the emissions standards necessary to reduce risk to an acceptable level without considering costs. In the second step of the approach, the EPA considers whether the emissions standards provide an ample margin of safety to protect public health ''in consideration of all health information, including the number of persons at risk levels higher than approximately 1 in 1 million, as well as other relevant factors, including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision.'' *Id.* The EPA must promulgate emission standards necessary to provide an ample margin of safety to protect public health or determine that the standards being reviewed provide an ample margin of safety without any revisions. After conducting the ample margin of safety analysis, we consider whether a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

CAA section 112(d)(6) requires the EPA to review standards promulgated under CAA section 112 and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less often than every 8 years. In conducting this review, which we call the ''technology review,'' the EPA is not required to recalculate the MACT floors that were established in earlier rulemakings. *NRDC* v. *EPA,* 529 F.3d at 1084; *Association of Battery Recyclers, Inc.* v. *EPA,* 716 F.3d 667 (D.C. Cir. 2013). The EPA may consider cost in deciding whether to revise the standards pursuant to CAA section 112(d)(6). The EPA is required to address regulatory gaps, such as missing MACT standards for listed air toxics known to be emitted from major source categories, and any new MACT standards must be established under CAA sections 112(d)(2) and (3), or, in specific circumstances, CAA sections 112(d)(4) or (h). *Louisiana Environmental Action Network (LEAN)* v. *EPA,* 955 F.3d 1088 (D.C. Cir. 2020).

The EPA conducted a residual risk and technology review for the HON in 2006, concluding that there was no need to revise the HON under the provisions of either CAA section 112(f) or 112(d)(6). As part of the residual risk review, the EPA conducted a risk assessment, and based on the results of the risk assessment, determined that the then current level of control called for by the existing MACT standards both reduced HAP emissions to levels that presented an acceptable level of risk and provided an ample margin of safety to protect public health (see 71 FR 76603, December 21, 2006 for additional details). In 2008, the EPA conducted a residual risk and technology review for four of the P&R I source categories (including the Polysulfide Rubber Production, Ethylene-Propylene Elastomers Production, Butyl Rubber Production, and Neoprene Production source categories) and all P&R II source categories (Epoxy Resins Production and Non-Nylon Polyamides Production source categories). In 2011, the EPA completed the residual risk and technology review for the remaining five P&R I source categories (Epichlorohydrin Elastomers Production, Hypalon™ Production, Polybutadiene Rubber Production, Styrene-Butadiene Rubber and Latex Production, and Nitrile Butadiene Rubber Production); and the EPA concluded in these actions that there was no need to revise standards for any of the nine P&R I source categories and two P&R II source categories under the provisions of either CAA section 112(f) or 112(d)(6) (see 73 FR 76220, December 16, 2008 and 77 FR 22566, April 21, 2011 for additional details).

This action constitutes another CAA section 112(d)(6) technology review for the HON, P&R I, and P&R II. This action also constitutes an updated CAA section 112(f) risk review based on new information for the HON and for affected sources producing neoprene subject to P&R I. We note that although there is no statutory CAA obligation under CAA section 112(f) for the EPA to conduct a second residual risk review of the HON or standards for affected sources producing neoprene subject to P&R I, the EPA retains discretion to revisit its residual risk reviews where the Agency deems that is warranted. *See, e.g., Fed. Commc'ns Comm'n* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 42 (1983); *Ethylene Oxide Emissions Standards for Sterilization Facilities; Final Decision,* 71 FR 17712, 17715 col. 1 (April 7, 2006) (in residual risk review for EtO, EPA asserting its ''authority to revisit (and revise, if necessary) any rulemaking if there is sufficient evidence that changes within the affected industry or significant improvements to science suggests the public is exposed to significant increases in risk as compared to the risk

[10] Although defined as ''maximum individual risk,'' MIR refers only to cancer risk. MIR, one metric for assessing cancer risk, is the estimated risk if an individual were exposed to the maximum level of a pollutant for a lifetime.

assessment prepared for the rulemaking (*e.g.,* CAA section 301).''). Here, the specific changes to health information related to certain pollutants emitted by these unique categories led us to determine that it is appropriate, in this case, to conduct these second residual risk reviews under section 112(f). In particular, the EPA is concerned about the cancer risks posed from the SOCMI (*i.e.,* HON) source category due to the EPA's 2016 updated IRIS inhalation URE for EtO, which shows EtO to be significantly more toxic than previously known.[11] The EPA's 2006 risk and technology review (RTR) could not have had the benefit of this updated URE at the time it was conducted, but if it had would have necessarily resulted in different conclusions about risk acceptability and the HON's provision of an ample margin of safety to protect public health. Similarly, for chloroprene, when the EPA conducted the first residual risk assessment for the SOCMI and Neoprene Production source categories, there was no inhalation URE for chloroprene and, therefore, no cancer risk was attributed to chloroprene emissions in either of those risk reviews. The EPA's 2006 and 2008 RTRs could not have had the benefit of this new URE at the time they were conducted, but if they had would have necessarily resulted in different conclusions about risk acceptability and P&R I's provision of an ample margin of safety to protect public health. The development of the EPA's IRIS inhalation URE for chloroprene was concluded in 2010, which allows us to assess cancer risks posed by chloroprene for the first time. Thus, we are conducting this analysis in this action. In order to ensure our standards provide an ample margin of safety to protect public health following the new IRIS inhalation UREs for EtO and chloroprene, we are exercising our discretion and conducting risk assessments in this action for HON sources and for affected sources producing neoprene subject to P&R I. Finally, we note that on September 15, 2021, the EPA partially granted a citizen administrative petition requesting that the EPA conduct a second residual risk review under CAA section 112(f)(2) for the HON, stating our intent to conduct a human health risk assessment concurrently with the section 112(d)(6) review.[12] Likewise, on March 4, 2022, the EPA partially granted another citizen administrative petition requesting that the EPA also conduct a second residual risk review under CAA section 112(f) for P&R I, stating that we intend to conduct a human health risk assessment concurrently with the section 112(d)(6) review.[13] This proposed rulemaking is partly undertaken to take action in response to those citizen administrative petitions. In sum, even though we do not have a mandatory duty to conduct repeated residual risk reviews under CAA section 112(f)(2), we have the authority to revisit any rulemaking if there is sufficient evidence that changes within the affected industry or significant new scientific information suggesting the public is exposed to significant increases in risk as compared to the previous risk assessments prepared for earlier rulemakings.

2. NSPS

The EPA's authority for this proposed rule related to NSPS is CAA section 111, which governs the establishment of standards of performance for stationary sources. Section 111(b)(1)(A) of the CAA requires the EPA Administrator to list categories of stationary sources that in the Administrator's judgment cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. The EPA must then issue performance standards for new (and modified or reconstructed) sources in each source category pursuant to CAA section 111(b)(1)(B). These standards are referred to as new source performance standards, or NSPS. The EPA has the authority to define the scope of the source categories, determine the pollutants for which standards should be developed, set the emission level of the standards, and distinguish among classes, types, and sizes within categories in establishing the standards.

CAA section 111(b)(1)(B) requires the EPA to ''at least every 8 years review and, if appropriate, revise'' NSPS. However, the Administrator need not review any such standard if the ''Administrator determines that such review is not appropriate in light of readily available information on the efficacy'' of the standard. When conducting a review of an existing performance standard, the EPA has the discretion and authority to add emission limits for pollutants or emission sources not currently regulated for that source category.

In setting or revising a performance standard, CAA section 111(a)(1) provides that performance standards are to reflect ''the degree of emission limitation achievable through the application of the BSER which (taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.'' The term ''standard of performance'' in CAA section 111(a)(1) makes clear that the EPA is to determine both the BSER for the regulated sources in the source category and the degree of emission limitation achievable through application of the BSER. The EPA must then, under CAA section 111(b)(1)(B), promulgate standards of performance for new sources that reflect that level of stringency. CAA section 111(h)(1) authorizes the Administrator to promulgate ''a design, equipment, work practice, or operational standard, or combination thereof'' if in his or her judgment, ''it is not feasible to prescribe or enforce a standard of performance.'' CAA section 111(h)(2) provides the circumstances under which prescribing or enforcing a standard of performance is ''not feasible,'' such as, when the pollutant cannot be emitted through a conveyance designed to emit or capture the pollutant, or when there is no practicable measurement methodology for the particular class of sources. CAA section 111(b)(5) precludes the EPA from prescribing a particular technological system that must be used to comply with a standard of performance. Rather, sources can select any measure or combination of measures that will achieve the standard.

Pursuant to the definition of new source in CAA section 111(a)(2), standards of performance apply to facilities that begin construction, reconstruction, or modification after the date of publication of the proposed standards in the **Federal Register**. Under CAA section 111(a)(4), ''modification'' means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted. Changes to an existing facility that do

[11] U.S. EPA. *Evaluation of the Inhalation Carcinogenicity of Ethylene Oxide (CASRN 75–21–8) In Support of Summary Information on the Integrated Risk Information System (IRIS).* December 2016. EPA/635/R–16/350Fa. Available at: *https://cfpub.epa.gov/ncea/iris/iris_documents/documents/toxreviews/1025tr.pdf.* See also, 87 FR 77985 (Dec. 21, 2022), ''Reconsideration of the 2020 National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing Residual Risk and Technology Review,'' Final action; reconsideration of the final rule.

[12] See letter dated September 15, 2021, from Joseph Goffman to Kathleen Riley, Emma Cheuse, and Adam Kron which is available in the docket for this rulemaking.

[13] See letter dated March 4, 2022, from Joseph Goffman to Emma Cheuse, Deena Tumeh, Michelle Mabson, Maryum Jordan, and Dorian Spence which is available in the docket for this rulemaking.

not result in an increase in emissions are not considered modifications. Under the provisions in 40 CFR 60.15, reconstruction means the replacement of components of an existing facility such that: (1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility; and (2) it is technologically and economically feasible to meet the applicable standards. Pursuant to CAA section 111(b)(1)(B), the standards of performance or revisions thereof shall become effective upon promulgation.

In the development of NSPS for the SOCMI source category, the EPA considered emission sources associated with unit processes, storage and handling equipment, fugitive emission sources, and secondary sources. In 1983, the EPA promulgated NSPS for VOC from equipment leaks in SOCMI (40 CFR part 60, subpart VV). In 1990, the EPA promulgated NSPS (40 CFR part 60, subparts III and NNN) for VOC from air oxidation unit processes and distillation operations in the SOCMI (55 FR 26912 and 55 FR 26931). In 1993, the EPA promulgated NSPS (40 CFR part 60, subpart RRR) for VOC from reactor processes in the SOCMI (58 FR 45948). In 2007, based on its review of NSPS subpart VV, the EPA promulgated certain amendments to NSPS subpart VV and new NSPS (40 CFR part 60, subpart VVa) for VOC from certain equipment leaks in the SOCMI (72 FR 64883). This proposed action presents the required CAA 111(b)(1)(B) review of the NSPS for the air oxidation unit processes (subpart III), distillation operations (subpart NNN), reactor processes (subpart RRR), and equipment leaks (subpart VVa).

3. Petition for Reconsideration

In addition to the proposed action under section 111(b)(1)(B) described above, this action includes proposed amendments to the NSPS for VOC from equipment leaks in SOCMI based on its reconsideration of certain aspects of NSPS subparts VV and VVa that were raised in an administrative petition and of which the Agency has granted reconsideration pursuant to section 307(d)(7)(B) of the CAA. In January 2008, the EPA received one petition for reconsideration of the NSPS for VOC from equipment leaks in SOCMI (40 CFR part 60, subparts VV and VVa) and the NSPS for equipment leaks in petroleum refineries (40 CFR part 60, subparts GGG and GGGa) pursuant to CAA section 307(d)(7)(B) from the following petitioners: American Chemistry Council, American Petroleum Institute, and National Petrochemical and Refiners Association (now the American Fuel and Petrochemical Manufacturers). A copy of the petition and subsequent EPA correspondence granting reconsideration is provided in the docket for this rulemaking (see Docket No. EPA–HQ–OAR–2022–0730). The petitioners primarily requested the EPA reconsider four provisions in those rules: (1) The clarification of the definition of process unit in subparts VV, VVa, GGG, and GGGa; (2) the assignment of shared storage vessels to specific process units in subparts VV, VVa, GGG, and GGGa; (3) the monitoring of connectors in subpart VVa; and (4) the definition of capital expenditure in subpart VVa.[14] The rationale for this request is provided in the petition. The petitioners also requested that the EPA stay the effectiveness of these provisions of the rule pending resolution of their petition for reconsideration. On March 4, 2008, the EPA sent a letter to the petitioners informing them that the EPA was granting their request for reconsideration on issues (2) through (4) above. The letter also indicated that the EPA was not taking action on the first issue related to the definition of process unit. Finally, the letter indicated that the EPA was granting a 90-day stay of the provisions of the rules under reconsideration (see CAA section 307(d)(7)(B)), as well as the clarification of the definition of process unit, because of its reliance upon the new provision on the allocation of shared storage vessels. On June 2, 2008, the EPA published three actions in the **Federal Register** relative to extending the 90-day stay. Specifically, the EPA published a direct final rule (73 FR 31372) and a parallel proposal (73 FR 31416) in the **Federal Register** to extend the stay until we take final action on the issues of which EPA granted reconsideration. Under the direct final rule, the stay would take effect 30 days after the close of the comment period on the proposed stay if no adverse comments were received. The third notice published that same day was an interim final rule extending the 90-day stay at the time for an additional 60 days so that the stay would not expire before the direct final rule could take effect (73 FR 31376). The EPA did not receive adverse comments on the proposed stay and, as a result, the stay became effective August 1, 2008.

[14] Note that this action does not respond to the reconsideration of NSPS subparts GGG and GGGa, as the EPA is not reviewing those subparts in this action.

In the June 2, 2008, actions, the EPA indicated that it would be publishing a **Federal Register** notice in response to the petition; therefore, the purpose of today's notice is to formally respond to the issues raised in the petition with respect to NSPS subparts VV and VVa. This proposed action presents the EPA's proposed revisions to the NSPS for VOC from equipment leaks in SOCMI based on the EPA's reconsideration of issues (2) through (4) in the petition. We are also proposing amendments that address the stay on issue (1) in the petition. See section III.E.4 of this preamble for details about these proposed amendments.

B. What are the source categories and how do the current standards regulate emissions?

The source categories that are the subject of this proposal are the SOCMI source category subject to the HON and 11 Polymers and Resins Production source categories subject to P&R I and P&R II. The NESHAP and NSPS included in this action that regulate emission sources from the SOCMI and Polymers and Resins Production source categories are described below.

1. HON

The sources affected by the current HON include heat exchange systems and maintenance wastewater located at SOCMI facilities that are regulated under NESHAP subpart F; process vents, storage vessels, transfer racks, and wastewater streams located at SOCMI facilities that are regulated under NESHAP subpart G; equipment leaks associated with SOCMI processes regulated under NESHAP subpart H; and equipment leaks from certain non-SOCMI processes at chemical plants regulated under NESHAP subpart I. As previously mentioned, these four NESHAP are more commonly referred together as the HON.

In general, the HON applies to CMPUs that: (1) Produce one of the listed SOCMI chemicals,[15] and (2) either use as a reactant or produce a listed organic HAP in the process. A CMPU means the equipment assembled and connected by pipes or ducts to process raw materials and to manufacture an intended product. A CMPU consists of more than one unit operation. A CMPU includes air oxidation reactors and their associated product separators and recovery devices; reactors and their associated product separators and recovery devices; distillation units and their associated distillate receivers and recovery devices; associated unit

[15] See Table 1 to NESHAP subpart F.

operations; associated recovery devices; and any feed, intermediate and product storage vessels, product transfer racks, and connected ducts and piping. A CMPU includes pumps, compressors, agitators, PRDs, sampling connection systems, open-ended valves or lines (OEL), valves, connectors, instrumentation systems, and control devices or systems. A CMPU is identified by its primary product.

a. NESHAP Subpart F

NESHAP subpart F contains provisions to determine which chemical manufacturing processes at a SOCMI facility are subject to the HON. Table 1 of NESHAP subpart F contains a list of SOCMI chemicals, and Table 2 of NESHAP subpart F contains a list of organic HAP regulated by the HON. In general, if a process both: (1) Produces one of the listed SOCMI chemicals and (2) either uses as a reactant or produces a listed organic HAP in the process, then that SOCMI process is subject to the HON. Details on how to determine which emission sources (*i.e.,* heat exchange systems, process vents, storage vessels, transfer racks, wastewater, and equipment leaks) are part of a chemical manufacturing process are also contained in NESHAP subpart F. NESHAP subpart F also contains monitoring requirements for HAP (*i.e.,* HAP listed in Table 4 of NESHAP subpart F) that may leak into cooling water from heat exchange systems. Additionally, NESHAP subpart F requires sources to prepare a description of procedures for managing maintenance wastewater as part of a SSM plan.

b. NESHAP Subpart G

NESHAP subpart G contains the standards for process vents, transfer racks, storage vessels, and wastewater at SOCMI facilities; it also includes emissions averaging provisions. NESHAP subpart G provides an equation representing a site-specific allowable overall emission limit for the combination of all emission sources subject to the HON at a SOCMI facility. Existing sources must demonstrate compliance using one of two approaches: the point-by-point compliance approach or the emissions averaging approach. New sources are not allowed to use emissions averaging, but rather must demonstrate compliance using the point-by-point approach. Under the point-by-point approach, the owner or operator would apply control to each Group 1 emission source. A Group 1 emission source is a point which meets the control applicability criteria, and the owner or operator must reduce emissions to specified levels; whereas a Group 2 emission source is one that does not meet the criteria and no additional emission reduction is required. Under the emissions averaging approach, an owner or operator may elect to control different groups of emission sources to different levels than specified the point-by-point approach, as long as the overall emissions do not exceed the overall allowable emission level. For example, an owner or operator can choose not to control a Group 1 emission source (or to control the emission source with a less effective control technique) if the owner or operator over-controls another emission source. For the point-by-point approach, NESHAP subpart G contains the following standards:

- Group 1 process vents must reduce emissions of organic HAP using a flare meeting 40 CFR 63.11(b); reduce emissions of total organic HAP or TOC by 98 percent by weight or to an exit concentration of 20 ppmv, whichever is less stringent; or achieve and maintain a TRE index value [16] greater than 1.0.[17]
- Group 1 transfer racks must reduce emissions of total organic HAP by 98 percent by weight or to an exit concentration of 20 ppmv, whichever is less stringent; or reduce emissions of organic HAP using a flare meeting 40 CFR 63.11(b), using a vapor balancing system, or by routing emissions to a fuel gas system or to a process.
- Group 1 storage vessels must reduce emissions of organic HAP using a fixed roof tank equipped with an IFR; using an external floating roof (EFR); using an EFR tank converted to a fixed roof tank equipped with an IFR; by routing emissions to a fuel gas system or to a process; or reduce emissions of organic HAP by 95 percent by weight using a closed vent system (*i.e.,* vapor collection system) and control device, or combination of control devices (or reduce emissions of organic HAP by 90 percent by weight using a closed vent system and control device if the control device was installed before December 31, 1992).
- Group 1 process wastewater streams and equipment managing such streams at both new and existing sources must meet control requirements for: (1) Waste management units including wastewater tanks, surface impoundments, containers, individual drain systems, and oil-water separators; (2) treatment processes including the design steam stripper, biological treatment units, or other treatment devices; and (3) closed vent systems and control devices such as flares, catalytic incinerators, etc. Existing sources are not required to meet control requirements if Group 1 process wastewater streams are included in a 1 megagram per year source-wide exemption allowed by NESHAP subpart G.
- In general, Group 2 emission sources are not required to apply any additional emission controls (provided they remain below Group 1 thresholds); however, they are subject to certain monitoring, reporting, and recordkeeping requirements to ensure that they were correctly determined to be Group 2 and that they remain Group 2.

c. NESHAP Subpart H

NESHAP subpart H contains the standard for equipment leaks at SOCMI facilities, including leak detection and repair (LDAR) provisions and other control requirements. Equipment regulated includes pumps, compressors, agitators, PRDs, sampling connection systems, OEL, valves, connectors, surge control vessels, bottoms receivers, and instrumentation systems in organic HAP service. A piece of equipment is in organic HAP service if it contains or contacts a fluid that is at least 5 percent by weight organic HAP. Depending on the type of equipment, the standards require either periodic monitoring for and repair of leaks, the use of specified equipment to minimize leaks, or specified work practices. Monitoring for leaks must be conducted using EPA Method 21 in appendix A–7 to 40 CFR part 60 or other approved equivalent monitoring techniques.

d. NESHAP Subpart I

NESHAP subpart I provides the applicability criteria for certain non-SOCMI processes subject to the negotiated regulation for equipment leaks. Regulated equipment is the same as that for NESHAP subpart H.

2. P&R I

P&R I generally follows and refers to the requirements of the HON, with additional requirements for batch process vents. Generally, P&R I applies to EPPUs and associated equipment. Similar to a CMPU in the HON, an EPPU means a collection of equipment assembled and connected by hard-piping or duct work used to process raw materials and manufacture elastomer

[16] See section III.C.3.a of this preamble for a description of the TRE index value and how the concept is currently used in the HON.

[17] Halogenated vent streams (as defined in NESHAP subpart G) from Group 1 process vents may not be vented to a flare and must reduce the overall emissions of hydrogen halides and halogens by 99 percent (or 95 percent for control devices installed prior to December 31, 1992) or reduce the outlet mass emission rate of total hydrogen halides and halogens to less than 0.45 kg/hr.

product. The EPPU includes unit operations, recovery operations, process vents, storage vessels, and equipment that are covered by equipment leak standards and produce one of the elastomer types listed as an elastomer product, including: butyl rubber, epichlorohydrin elastomer, ethylene propylene rubber, halobutyl rubber, Hypalon™, neoprene, nitrile butadiene latex, nitrile butadiene rubber, polybutadiene rubber/styrene butadiene rubber by solution, polysulfide rubber, styrene butadiene latex, and styrene butadiene rubber by emulsion. An EPPU consists of more than one unit operation. An EPPU includes, as ''equipment,'' pumps, compressors, agitators, PRDs, sampling connection systems, OEL, valves, connectors, surge control vessels, bottoms receivers, instrumentation systems, and control devices or systems.

The emissions sources affected by P&R I include heat exchange systems and maintenance wastewater at P&R I facilities regulated under NESHAP subpart F; storage vessels, transfer racks, and wastewater streams at P&R I facilities regulated under NESHAP subpart G; and equipment leaks at P&R I facilities regulated under NESHAP subpart H. Process vents are also regulated emission sources but, unlike the HON, these emissions sources are subdivided into front and back-end process vents in P&R I. The front-end are unit operations prior to and including the stripping operations. These are further subdivided into continuous front-end process vents regulated under NESHAP subpart G and batch front-end process vents that are regulated according to the requirements within P&R I. Back-end unit operations include filtering, coagulation, blending, concentration, drying, separating, and other finishing operations, as well as latex and crumb storage. The requirements for back-end process vents are not subcategorized into batch or continuous and are also found within P&R I.

3. P&R II

P&R II regulates HAP emissions from two source categories, Epoxy Resins Production (also referred to as basic liquid epoxy resins or BLR) and Non-Nylon Polyamides Production (also referred to as wet strength resins or WSR). P&R II takes a different regulatory and format approach from P&R I but still refers to HON provisions for a portion of the standards. BLR are resins made by reacting epichlorohydrin and bisphenol A to form diglycidyl ether of bisphenol-A. WSR are polyamide/epichlorohydrin condensates which are used to increase the tensile strength of paper products.

The emission sources affected by P&R II are all HAP emission points within a facility related to the production of BLR or WSR. These emission points include process vents, storage tanks, wastewater systems, and equipment leaks. Equipment includes connectors, pumps, compressors, agitators, PRDs, sampling connection systems, OEL, and instrumentation system in organic HAP service. Equipment leaks are regulated under the HON (*i.e.,* NESHAP subpart H).

Process vents, storage tanks, and wastewater systems combined are regulated according to a production-based emission rate (*e.g.,* pounds HAP per million pounds BLR or WSR produced). For existing sources, the rate shall not exceed 130 pounds per 1 million pounds of BLR produced and 10 pounds per 1 million pounds of WSR produced. For new sources, BLR requires all uncontrolled emissions to achieve 98 percent reduction or limits the total emissions to 5,000 pounds of HAP per year. New WSR sources are limited to 7 pounds of HAP per 1 million pounds of WSR produced.

4. NSPS Subpart VVa

NSPS subpart VVa contains VOC standards for leaks from equipment within a process unit for which construction, reconstruction, or modification commenced after November 7, 2006. Under NSPS subpart VVa, equipment means each pump, compressor, PRD, sampling connection system, OEL, valve, and flange or other connector in VOC service and any devices or systems required by the NSPS. Process units consist of components assembled to produce, as intermediate or final products, one or more of the chemicals listed in 40 CFR 60.489. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the product. The standards in NSPS subpart VVa include LDAR provisions and other control requirements. A piece of equipment is in VOC service if it contains or contacts a fluid that is at least 10 percent by weight VOC. Depending on the type of equipment, the standards require either periodic monitoring for and repair of leaks, the use of specified equipment to minimize leaks, or specified work practices. Monitoring for leaks must be conducted using EPA Method 21 in appendix A–7 to 40 CFR part 60 or other approved equivalent monitoring techniques.

5. NSPS Subpart III

NSPS subpart III regulates VOC emissions from SOCMI air oxidation reactors for which construction, reconstruction, or modification commenced after October 21, 1983. For the purpose of NSPS subpart III, air oxidation reactors are devices or process vessels in which one or more organic reactants are combined with air, or a combination of air and oxygen, to produce one or more organic compounds. The affected facility is designated as a single air oxidation reactor with its own individual recovery system (if any) or the combination of two or more air oxidation reactors and the common recovery system they share that produces one or more of the chemicals listed in 40 CFR 60.617 as a product, co-product, by-product, or intermediate. Owners and operators of an affected facility must reduce emissions of TOC (minus methane and ethane) by 98 percent by weight or to a concentration of 20 ppmv on a dry basis corrected to 3 percent oxygen, whichever is less stringent; combust the emissions in a flare meeting 40 CFR 60.18(b); or maintain a TRE index value [18] greater than 1.0 without use of VOC emission control devices.

6. NSPS Subpart NNN

NSPS subpart NNN regulates VOC emissions from SOCMI distillation operations for which construction, reconstruction, or modification commenced after December 30, 1983. For the purpose of NSPS subpart NNN, distillation operations are operations separating one or more feed stream(s) into two or more exit stream(s), each exit stream having component concentrations different from those in the feed stream(s); and the separation is achieved by the redistribution of the components between the liquid and vapor-phase as they approach equilibrium within a distillation unit. The affected facility is designated as a single distillation column with its own individual recovery system (if any) or the combination of two or more distillation columns and the common recovery system they share that is part of a process unit that produces any of the chemicals listed in 40 CFR 60.667 as a product, co-product, by-product, or intermediate. Owners and operators of an affected facility must reduce emissions of TOC (minus methane and ethane) by 98 percent by weight or to a concentration of 20 ppmv on a dry basis corrected to 3 percent oxygen,

[18] See section III.C.3.b of this preamble for a description of the TRE index value and how the concept is currently used in NSPS Subpart III.

whichever is less stringent; combust the emissions in a flare meeting 40 CFR 60.18(b); or maintain a TRE index value [19] greater than 1.0 without use of VOC emission control devices.

7. NSPS Subpart RRR

NSPS subpart RRR regulates VOC emissions from SOCMI reactor processes for which construction, reconstruction, or modification commenced after June 29, 1990. For the purpose of NSPS subpart RRR, reactor processes are unit operations in which one or more chemicals, or reactants other than air, are combined or decomposed in such a way that their molecular structures are altered and one or more new organic compounds are formed. The affected facility is designated as a single reactor process with its own individual recovery system (if any) or the combination of two or more reactor processes and the common recovery system they share that is part of a process unit that produces any of the chemicals listed in 40 CFR 60.707 as a product, co-product, by-product, or intermediate. Owners and operators of an affected facility must reduce emissions of TOC (minus methane and ethane) by 98 percent by weight or to a concentration of 20 ppmv on a dry basis corrected to 3 percent oxygen, whichever is less stringent; combust the emissions in a flare meeting 40 CFR 60.18(b); or maintain a TRE index value [20] greater than 1.0 without use of VOC emission control devices.

C. What data collection activities were conducted to support this action?

The EPA used several data sources to determine the facilities that are subject to the NESHAP and NSPS discussed in section II.B of this preamble. We identified facilities in the 2017 National Emissions Inventory (NEI) and the Toxics Release Inventory system having a primary facility NAICS code beginning with 325, Chemical Manufacturing. We also used information from the 2006 HON RTR, the 2008 and 2011 P&R RTRs, other internal chemical sector facility lists from the EPA's recent petrochemical sector RTR rulemakings (*e.g.,* Miscellaneous Organic Chemical Manufacturing NESHAP (MON), Organic Liquids Distribution (Non-Gasoline) NESHAP (OLD), Ethylene Production MACT standards (EMACT), and Petroleum Refinery MACT 1 standards (the Petroleum Refinery Sector rule)), and the Office of Enforcement and Compliance Assurance's (OECA) Enforcement and Compliance History Online (ECHO) tool (*https://echo.epa.gov*). To inform our reviews of our emission standards, we reviewed the EPA's Reasonably Available Control Technology (RACT)/Best Available Control Technology (BACT)/Lowest Achievable Emission Rate (LAER) Clearinghouse and regulatory development efforts for similar sources published after the rules that are subject to this proposal were developed. The EPA also reviewed air permits to determine facilities subject to the HON, and P&R I and P&R II. We also met with industry representatives from the American Chemistry Council, American Fuel & Petrochemical Manufacturers, and Vinyl Institute to collect data and discuss industry practices.

In June 2021 and January 2022, the EPA issued requests, pursuant to CAA section 114, to collect information from HON facilities (one being also subject to P&R I and several being also subject to NSPS subparts III, NNN, and/or RRR) owned and operated by nine entities (*i.e.,* corporations). Many of the entities chosen have facilities that produce, use, and emit EtO or chloroprene, which are pollutants with considerable concern for cancer risk for the SOCMI and Neoprene Production source categories. This effort focused on gathering comprehensive information about process equipment, control technologies, point and fugitive emissions, and other aspects of facility operations. Companies submitted responses (and follow-up responses) to the EPA between March 2022 and December 2022 (for the January 2022 request). Additionally, as part of the January 2022 CAA section 114 requests, the EPA requested stack testing for certain emission sources (*e.g.,* pollutants for vent streams associated with each EtO production line). Also, the EPA required, as part of the January 2022 CAA section 114 request, that facilities conduct fugitive emission testing (*i.e.,* fenceline monitoring) for benzene, 1,3-butadiene, chloroprene, EtO, ethylene dichloride, or vinyl chloride. The results of the January 2022 requests were submitted to the EPA during the summer and fall of 2022. For the one facility that received a CAA section 114 request in June 2021, the EPA has received responses (and follow-up responses) from them in the fall and winter of 2021, and also began receiving fenceline monitoring data for chloroprene and 1,3-butadiene in January 2022 (and is continuing to receive this data).[21] The EPA has used the collected information to fill data gaps, establish the baseline emissions and control levels for purposes of the regulatory reviews, identify the most effective control measures, and estimate the public health and environmental and cost impacts associated with the regulatory options considered and reflected in this proposed action. The information not claimed as CBI by respondents is available in the document titled *Data Received From Information Collection Request for Chemical Manufacturers,* in the docket for this action, Docket ID No. EPA–HQ–OAR–2022–0730. A list of facilities located in the United States that are part of the SOCMI source category with processes subject to the HON, P&R I, P&R II, and/or the SOCMI NSPS (40 CFR part 60, subparts VVa, III, NNN, and RRR), is available in the document titled *Lists of Facilities Subject to the HON, Group I and Group II Polymers and Resins NESHAPs, and NSPS subparts VV, VVa, III, NNN, and RRR,* in the docket for this action, Docket ID No. EPA–HQ–OAR–2022–0730.

D. What other relevant background information and data are available?

As mentioned above, today's action includes proposed amendments to the current flare requirements in the SOCMI NSPS for air oxidation reactors, distillation columns, and reactor processes, and NESHAP for the HON and P&R I. In proposing these amendments, we relied on certain technical reports and memoranda that the EPA developed for flares used as APCDs in the Petroleum Refinery Sector residual risk and technology review and NSPS rulemaking (80 FR 75178, December 1, 2015). The Petroleum Refinery sector docket is at Docket ID No. EPA–HQ–OAR–2010–0682. For completeness of the rulemaking record for today's action and for ease of reference in finding these items in the publicly available petroleum refinery sector rulemaking docket, we are including the most relevant flare related technical support documents in the docket for this proposed action (Docket ID No. EPA–HQ–OAR–2022–0730) and including a list of all documents used to inform the 2015 flare provisions in the Petroleum Refinery Sector residual risk and technology review and NSPS rulemaking in the document titled *Control Option Impacts for Flares Located in the SOCMI Source Category*

[19] See section III.C.3.b of this preamble for a description of the TRE index value and how the concept is currently used in NSPS Subpart NNN.

[20] See section III.C.3.b of this preamble for a description of the TRE index value and how the concept is currently used in NSPS Subpart RRR.

[21] As fenceline monitoring data continues to be gathered for this facility, it is being posted on the following web page: *https://www.epa.gov/la/denka-air-monitoring-data-summaries.*

that Control Emissions from Processes Subject to HON and for Flares that Control Emissions from Processes Subject to Group I and Group II Polymers and Resins NESHAPs, which is available in the docket for this rulemaking.

We are also relying on data gathered to support the RTRs for the EMACT standards, MON, and OLD NESHAP, as well as memoranda documenting the technology reviews for those processes. Many of the emission sources for ethylene production facilities, MON facilities, and OLD facilities are similar to HON, P&R I, and P&R II facilities, and several of the control options analyzed for the HON, and P&R I and P&R II, were also analyzed for the RTRs for the EMACT standards, MON, and OLD NESHAP. The memoranda and background technical information can be found in the Ethylene Production RTR rulemaking docket, Docket ID No. EPA–HQ–OAR–2017–0357; the MON RTR rulemaking docket, Docket ID No. EPA–HQ–OAR–2018–0746; and the OLD RTR rulemaking docket, Docket ID No. EPA–HQ–OAR–2018–0074.

Additional information related to the promulgation and subsequent amendments of the NSPS subparts VVa, III, NNN, and RRR, the HON, and P&R I and P&R II is available in Docket ID Nos. A–80–25, A–81–22, A–83–29, A–90–19, EPA–HQ–OAR–2002–0026, EPA–HQ–OAR–2002–0281, EPA–HQ–OAR–2002–0284, EPA–HQ–OAR–2002–0475, EPA–HQ–OAR–2006–0699, EPA–HQ–OAR–2007–0211, and EPA–HQ–OAR–2010–0600.

Lastly, the EPA acknowledges that there is also some unique ambient community monitoring data available for chloroprene concentrations near the Neoprene Production facility that was developed since 2016 separately from this rulemaking process.[22] This unique ambient community monitoring data includes data gathered by the EPA and the Louisiana Department of Environmental Quality and consists of short-term, 24-hour cannister sampling data gathered over various days throughout a four-year period both before and after the Neoprene Production facility installed controls to reduce emissions of chloroprene. The data generally indicate that concentrations in the community have decreased over time, but the current levels corroborate the need for further reductions.

Consistent with our usual practice in developing proposed rules under CAA section 112(f)(2), the EPA has conducted its risk assessment based on modeling of current allowable and/or actual emissions and projected future emissions. The EPA has not relied on the unique ambient community monitoring data for the Neoprene Production facility: (1) In assessing the remaining risk from chloroprene emissions from the SOCMI or Neoprene Production source categories after compliance with existing emission standards or (2) in projecting future risks that would remain after compliance with the proposed standards here. Consequently, the unique ambient community monitoring data is not part of our rulemaking record.

The EPA relies on modeling, which is not dependent on the availability (or lack thereof) of monitoring data, to perform our risk assessments when developing residual risk analyses under CAA section 112(f)(2). Modeling provides the EPA with the ability and flexibility to estimate risks for all populations living near the sources across an impacted industrial source category, and to estimate various risk metrics, such as the MIR, cancer incidence, and number of people above specific risk thresholds. Modeling also allows the EPA to assess the risks that will remain after the implementation of proposed controls. With these caveats in mind, the EPA seeks comment on the relevance (if any) of the unique ambient community monitoring data to the EPA's rulemaking.

E. How do we consider risk in our decision-making?

As discussed in section II.A.1 of this preamble and in the 1989 Benzene NESHAP, in evaluating and developing standards under CAA section 112(f)(2), our longstanding and consistent policy is that we apply a two-step approach to determine whether or not risks are acceptable and to determine if the standards provide an ample margin of safety to protect public health. As explained in the 1989 Benzene NESHAP, ''the first step judgment on acceptability cannot be reduced to any single factor'' and, thus, ''[t]he Administrator believes that the acceptability of risk under section 112 is best judged on the basis of a broad set of health risk measures and information.'' (54 FR 38046). Similarly, with regard to the ample margin of safety determination, ''the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including cost and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors.'' *Id.*

The 1989 Benzene NESHAP approach provides flexibility regarding factors the EPA may consider in making determinations and how the EPA may weigh those factors for each source category. The EPA conducts a risk assessment that provides estimates of the MIR posed by emissions of HAP that are carcinogens from each source in the source category, the hazard index (HI) for chronic exposures to HAP with the potential to cause noncancer health effects, and the hazard quotient (HQ) for acute exposures to HAP with the potential to cause noncancer health effects.[23] The assessment also provides estimates of the distribution of cancer risk within the exposed populations, cancer incidence, and an evaluation of the potential for an adverse environmental effect. The scope of the EPA's risk analysis is consistent with the explanation in EPA's response to comments on our policy under the 1989 Benzene NESHAP:

> The policy chosen by the Administrator permits consideration of multiple measures of health risk. Not only can the MIR figure be considered, but also incidence, the presence of non-cancer health effects, and the uncertainties of the risk estimates. In this way, the effect on the most exposed individuals can be reviewed as well as the impact on the general public. These factors can then be weighed in each individual case. This approach complies with the *Vinyl Chloride* mandate that the Administrator ascertain an acceptable level of risk to the public by employing his expertise to assess available data. It also complies with the Congressional intent behind the CAA, which did not exclude the use of any particular measure of public health risk from the EPA's consideration with respect to CAA section 112 regulations, and thereby implicitly permits consideration of any and all measures of health risk which the Administrator, in his judgment, believes are appropriate to determining what will ''protect the public health''.

(54 FR 38057). Thus, the level of the MIR is only one factor to be weighed in determining acceptability of risk. The 1989 Benzene NESHAP explained that ''an MIR of approximately one in 10 thousand should ordinarily be the upper end of the range of acceptability. As risks increase above this benchmark, they become presumptively less acceptable under CAA section 112, and would be weighed with the other health

[22] *https://www.epa.gov/la/denka-air-monitoring-data-summaries.*

[23] The MIR is defined as the cancer risk associated with a lifetime of exposure at the highest concentration of HAP where people are likely to live. The HQ is the ratio of the potential HAP exposure concentration to the noncancer dose-response value; the HI is the sum of HQs for HAP that affect the same target organ or organ system.

risk measures and information in making an overall judgment on acceptability. Or, the Agency may find, in a particular case, that a risk that includes an MIR less than the presumptively acceptable level is unacceptable in the light of other health risk factors.'' *Id.* at 38045. In other words, risks that include an MIR above 100-in-1 million may be determined to be acceptable, and risks with an MIR below that level may be determined to be unacceptable, depending on all of the available health information. Similarly, with regard to the ample margin of safety analysis, the EPA stated in the 1989 Benzene NESHAP that: ''EPA believes the relative weight of the many factors that can be considered in selecting an ample margin of safety can only be determined for each specific source category. This occurs mainly because technological and economic factors (along with the health-related factors) vary from source category to source category.'' *Id.* at 38061. We also consider the uncertainties associated with the various risk analyses, as discussed earlier in this preamble, in our determinations of acceptability and ample margin of safety.

The EPA notes that it has not considered certain health information to date in making residual risk determinations. At this time, we do not attempt to quantify the HAP risk that may be associated with emissions from other facilities that do not include the source category under review, mobile source emissions, natural source emissions, persistent environmental pollution, or atmospheric transformation in the vicinity of the sources in the category.

The EPA understands the potential importance of considering an individual's total exposure to HAP in addition to considering exposure to HAP emissions from the source category and facility. We recognize that such consideration may be particularly important when assessing noncancer risk, where pollutant-specific exposure health reference levels (*e.g.,* reference concentrations (RfCs)) are based on the assumption that thresholds exist for adverse health effects. For example, the EPA recognizes that, although exposures attributable to emissions from a source category or facility alone may not indicate the potential for increased risk of adverse noncancer health effects in a population, the exposures resulting from emissions from the facility in combination with emissions from all of the other sources (*e.g.,* other facilities) to which an individual is exposed may be sufficient to result in an increased risk of adverse noncancer health effects. In May 2010, the Science Advisory Board (SAB) advised the EPA ''that RTR assessments will be most useful to decision makers and communities if results are presented in the broader context of aggregate and cumulative risks, including background concentrations and contributions from other sources in the area.'' [24]

In response to the SAB recommendations, the EPA incorporates cumulative risk analyses into its RTR risk assessments. The Agency: (1) Conducts facility-wide assessments, which include source category emission points, as well as other emission points within the facilities; (2) combines exposures from multiple sources in the same category that could affect the same individuals; and (3) for some persistent and bioaccumulative pollutants, analyzes the ingestion route of exposure. In addition, the RTR risk assessments consider aggregate cancer risk from all carcinogens and aggregated noncancer HQs for all noncarcinogens affecting the same target organ or target organ system.

Although we are interested in placing source category and facility-wide HAP risk in the context of total HAP risk from all sources combined in the vicinity of each source, we note there are uncertainties of doing so. Estimates of total HAP risk from emission sources other than those that we have studied in depth during this RTR review would have significantly greater associated uncertainties than the source category or facility-wide estimates.

F. How do we estimate post-MACT risk posed by the source category?

In this section, we provide a complete description of the types of analyses that we generally perform during the risk assessment process. In some cases, we do not perform a specific analysis because it is not relevant. For example, in the absence of emissions of HAP known to be persistent and bioaccumulative in the environment (PB–HAP), we would not perform a multipathway exposure assessment. Where we do not perform an analysis, we state that we do not and provide the reason. While we present all of our risk assessment methods, we only present risk assessment results for the analyses actually conducted (see section III.B of this preamble).

The EPA conducts a risk assessment that provides estimates of the MIR for cancer posed by the HAP emissions from each source in the source category, the HI for chronic exposures to HAP with the potential to cause noncancer health effects, and the HQ for acute exposures to HAP with the potential to cause noncancer health effects. The assessment also provides estimates of the distribution of cancer risk within the exposed populations, cancer incidence, and an evaluation of the potential for an adverse environmental effect. The eight sections that follow this paragraph describe how we estimated emissions and conducted the risk assessment. The docket for this rulemaking contains the following documents which provide more information on the risk assessment inputs and models: *Residual Risk Assessment for the SOCMI Source Category in Support of the 2023 Risk and Technology Review Proposed Rule* and *Residual Risk Assessment for the Polymers & Resins I Neoprene Production Source Category in Support of the 2023 Risk and Technology Review Proposed Rule.* The methods used to assess risk (as described in the eight primary steps below) are consistent with those described by the EPA in the document reviewed by a panel of the EPA's SAB in 2009; [25] and described in the SAB review report issued in 2010. They are also consistent with the key recommendations contained in that report.

1. How did we estimate actual emissions and identify the emissions release characteristics?

As previously discussed, we updated the risk assessment in this action for the SOCMI and Neoprene Production source categories because these source categories have sources that emit EtO and/or chloroprene. The SOCMI and Neoprene Production source category facility lists were developed as described in section II.C of this preamble and consist of 207 HON facilities and one neoprene production facility.[26] For the 207 HON facilities, only 195 had reported HAP emissions in the 2017 NEI, and we note that two facilities included in the 207 are new/under construction and were not operating in 2017. The emissions modeling input files were developed using the EPA's 2017 NEI. However, in a few instances where facility-specific

[24] Recommendations of the SAB Risk and Technology Review Methods Panel are provided in their report, which is available at: *https://www.epa.gov/sites/default/files/2021-02/documents/epa-sab-10-007-unsigned.pdf.*

[25] U.S. EPA. *Risk and Technology Review (RTR) Risk Assessment Methodologies: For Review by the EPA's Science Advisory Board with Case Studies—MACT I Petroleum Refining Sources and Portland Cement Manufacturing,* June 2009. EPA–452/R–09–006. *https://www3.epa.gov/airtoxics/rrisk/rtrpg.html.*

[26] The one neoprene production facility also has collocated HON emissions sources from the production of chloroprene.

data were not available or not reflective of current controls in the 2017 NEI, we attempted to obtain data from a more recent dataset (*e.g.,* review of emissions inventory data from our CAA section 114 request, more recent inventories submitted to states, or 2018 NEI). Of note, for the one neoprene production facility (which is also part of the SOCMI source category), we used the 2019 emissions inventory that was provided to the EPA from our CAA section 114 request. The NEI data were also used to develop the other parameters needed to perform the risk modeling analysis, including the emissions release characteristics, such as stack heights, stack diameters, flow rates, temperatures, and emission release point locations. For further details on the assumptions and methodologies used to estimate actual emissions, see Appendix 1 of the document titled *Residual Risk Assessment for the SOCMI Source Category in Support of the 2023 Risk and Technology Review Proposed Rule,* which is available in the docket for this rulemaking.

2. How did we estimate MACT-allowable emissions?

The available emissions data in the RTR emissions dataset include estimates of the mass of HAP emitted during a specified annual time period. These ''actual'' emission levels are often lower than the emission levels allowed under the requirements of the current MACT standards. The emissions allowed under the MACT standards are referred to as the ''MACT-allowable'' emissions. We discussed the consideration of both MACT-allowable and actual emissions in the final Coke Oven Batteries RTR (70 FR 19992, 19998–19999, April 15, 2005) and in the proposed and final HON RTR (71 FR 34421, 34428, June 14, 2006, and 71 FR 76603, 76609, December 21, 2006, respectively). In those actions, we noted that assessing the risk at the MACT-allowable level is inherently reasonable since that risk reflects the maximum level facilities could emit and still comply with national emission standards. We also explained that it is reasonable to consider actual emissions, where such data are available, in both steps of the risk analysis, in accordance with the 1989 Benzene NESHAP approach. (54 FR 38044.)

For this analysis, we have determined that the actual emissions data are reasonable estimates of the MACT-allowable emissions levels for the SOCMI source category, as we are not generally aware of any situations in which a facility is conducting additional work practices or operating a control device such that it achieves a far greater emission reduction than required by the NESHAP. For the Neoprene Production source category, we do know that some emission sources (*e.g.,* process vents) are being controlled beyond the current level of the NESHAP standards. However, because there is only one facility in the source category and because we are proposing to require these same control requirements in this action, we consider these to be part of the baseline actual emissions. We are also not aware of the neoprene production facility over-controlling fugitive emission sources, which tend to be the predominant risk drivers for this source category. We note that because of the difficulty and uncertainty around comparing fugitive emissions reported in emission inventories (*i.e.,* assumptions and engineering calculations are generally used for fugitive emissions in emissions inventories since it is not practicable to measure them due to technological and economic limitations) to the MACT standards for both the SOCMI and Neoprene Production source categories and whether facilities are better controlling these emissions sources since they tend to drive risks, a separate assessment of risk for allowable emissions appears unnecessary given the finding that risks are unacceptable based on actual emissions (see section III.B of this preamble). For further details on the assumptions and methodologies used to estimate MACT-allowable emissions, see Appendix 1 of the document titled *Residual Risk Assessment for the SOCMI Source Category in Support of the 2023 Risk and Technology Review Proposed Rule,* which is available in the docket for this rulemaking.

3. How do we conduct dispersion modeling, determine inhalation exposures, and estimate individual and population inhalation risk?

Both long-term and short-term inhalation exposure concentrations and health risk from the source category addressed in this proposal were estimated using the Human Exposure Model (HEM).[27] The HEM performs three primary risk assessment activities: (1) Conducting dispersion modeling to estimate the concentrations of HAP in ambient air, (2) estimating long-term and short-term inhalation exposures to individuals residing within 50 kilometers (km) (~31 miles) of the modeled sources, and (3) estimating individual and population-level inhalation risk using the exposure estimates and quantitative dose-response information.

a. Dispersion Modeling

The EPA's American Meteorological Society/EPA Regulatory Model dispersion modeling system (AERMOD), used by the HEM, is one of the EPA's preferred models for assessing air pollutant concentrations from industrial facilities.[28] To perform the dispersion modeling and to develop the preliminary risk estimates, HEM draws on three data libraries. The first is a library of meteorological data, which is used for dispersion calculations. This library includes hourly surface and upper air observations for years ranging from 2016–2019 from over 800 meteorological stations, selected to provide coverage of the United States and Puerto Rico. A second library of United States Census Bureau census block[29] internal point locations and populations provides the basis of human exposure calculations (U.S. Census, 2010). In addition, for each census block, the census library includes the elevation and controlling hill height, which are also used in dispersion calculations. A third library of pollutant-specific dose-response values is used to estimate health risk. These are discussed below.

b. Risk From Chronic Exposure to HAP

In developing the risk assessment for chronic exposures, we use the estimated annual average ambient air concentrations of each HAP emitted by each source in the source category. The HAP air concentrations at each nearby census block centroid located within 50 km (~31 miles) of the facility are a surrogate for the chronic inhalation exposure concentration for all the people who reside in that census block. A distance of 50 km is consistent with both the analysis supporting the 1989 Benzene NESHAP (54 FR 38044) and the limitations of Gaussian dispersion models, including AERMOD.

For each facility, we calculate the MIR as the cancer risk associated with a continuous lifetime (24 hours per day, 7 days per week, 52 weeks per year, 70 years) exposure to the maximum concentration at the centroid of each inhabited census block. We calculate individual cancer risk by multiplying the estimated lifetime exposure to the

[27] For more information about HEM, go to *https://www.epa.gov/fera/risk-assessment-and-modeling-human-exposure-model-hem.*

[28] U.S. EPA. Revision to the *Guideline on Air Quality Models: Adoption of a Preferred General Purpose (Flat and Complex Terrain) Dispersion Model and Other Revisions* (70 FR 68218, November 9, 2005).

[29] A census block is the smallest geographic area for which census statistics are tabulated.

ambient concentration of each HAP (in micrograms per cubic meter (μg/m^3) by its URE. The URE is an upper-bound estimate of an individual's incremental risk of contracting cancer over a lifetime of exposure to a concentration of 1 microgram of the pollutant per cubic meter of air. For residual risk assessments, we generally use UREs from the EPA's IRIS. For carcinogenic pollutants without IRIS values, we look to other reputable sources of cancer dose-response values, often using California EPA (CalEPA) UREs, where available. In cases where new, scientifically credible dose-response values have been developed in a manner consistent with EPA guidelines and have undergone a peer review process similar to that used by the EPA, we may use such dose-response values in place of, or in addition to, other values, if appropriate. The pollutant-specific dose-response values used to estimate health risk are available at *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

To estimate individual lifetime cancer risks associated with exposure to HAP emissions from each facility in the source category, we sum the risks for each of the carcinogenic HAP [30] emitted by the modeled facility. We estimate cancer risk at every census block within 50 km of every facility in the source category. The MIR is the highest individual lifetime cancer risk estimated for any of those census blocks. In addition to calculating the MIR, we estimate the distribution of individual cancer risks for the source category by summing the number of individuals within 50 km of the sources whose estimated risk falls within a specified risk range. We also estimate annual cancer incidence by multiplying the estimated lifetime cancer risk at each census block by the number of people residing in that block, summing results for all of the census blocks, and then dividing this result by a 70-year lifetime.

To assess the risk of noncancer health effects from chronic exposure to HAP, we calculate either an HQ or a target organ-specific hazard index (TOSHI). We calculate an HQ when a single noncancer HAP is emitted. Where more than one noncancer HAP is emitted, we sum the HQ for each of the HAP that affects a common target organ or target organ system to obtain a TOSHI. The HQ is the estimated exposure divided by the chronic noncancer dose-response value, which is a value selected from one of several sources. The preferred chronic noncancer dose-response value is the EPA RfC, defined as ''an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime'' (*https://iaspub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&vocabName=IRIS%20Glossary*). In cases where an RfC from the EPA's IRIS is not available or where the EPA determines that using a value other than the RfC is appropriate, the chronic noncancer dose-response value can be a value from the following prioritized sources, which define their dose-response values similarly to the EPA: (1) The Agency for Toxic Substances and Disease Registry (ATSDR) Minimal Risk Level (*https://www.atsdr.cdc.gov/mrls/*); (2) the CalEPA Chronic Reference Exposure Level (REL) (*https://oehha.ca.gov/air/crnr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0*); or (3) as noted above, a scientifically credible dose-response value that has been developed in a manner consistent with the EPA guidelines and has undergone a peer review process similar to that used by the EPA. The pollutant-specific dose-response values used to estimate health risks are available at *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

c. Risk From Acute Exposure to HAP That May Cause Health Effects Other Than Cancer

For each HAP for which appropriate acute inhalation dose-response values are available, the EPA also assesses the potential health risks due to acute exposure. For these assessments, the EPA makes conservative assumptions about emission rates, meteorology, and exposure location. As part of our efforts to continually improve our methodologies to evaluate the risks that HAP emitted from categories of industrial sources pose to human health and the environment,[31] we revised our treatment of meteorological data to use reasonable worst-case air dispersion conditions in our acute risk screening assessments instead of worst-case air dispersion conditions. This revised treatment of meteorological data and the supporting rationale are described in more detail in the documents titled *Residual Risk Assessment for the SOCMI Source Category in Support of the 2023 Risk and Technology Review Proposed Rule* and *Residual Risk Assessment for the Polymers & Resins I Neoprene Production Source Category in Support of the 2023 Risk and Technology Review Proposed Rule,* and in Appendix 5 of the report: *Technical Support Document for Acute Risk Screening Assessment,* which are available in the docket for this rulemaking. This revised approach has been used in this proposed rule and in all other RTR rulemakings proposed on or after June 3, 2019.

To assess the potential acute risk to the maximally exposed individual, we use the peak hourly emission rate for each emission point,[32] reasonable worst-case air dispersion conditions (*i.e.,* 99th percentile), and the point of highest off-site exposure. Specifically, we assume that peak emissions from the source category and reasonable worst-case air dispersion conditions co-occur

[30] The EPA's 2005 *Guidelines for Carcinogen Risk Assessment* classifies carcinogens as: ''carcinogenic to humans,'' ''likely to be carcinogenic to humans,'' and ''suggestive evidence of carcinogenic potential.'' These classifications also coincide with the terms ''known carcinogen, probable carcinogen, and possible carcinogen,'' respectively, which are the terms advocated in the EPA's *Guidelines for Carcinogen Risk Assessment,* published in 1986 (51 FR 33992, September 24, 1986). In August 2000, the document, *Supplemental Guidance for Conducting Health Risk Assessment of Chemical Mixtures* (EPA/630/R–00/002), was published as a supplement to the 1986 document. Copies of both documents can be obtained from *https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=20533&CFID=70315376&CFTOKEN=71597944.* Summing the risk of these individual compounds to obtain the cumulative cancer risk is an approach that was recommended by the EPA's SAB in their 2002 peer review of the EPA's National Air Toxics Assessment (NATA) titled *NATA—Evaluating the National-scale Air Toxics Assessment 1996 Data—an SAB Advisory,* available at *https://yosemite.epa.gov/sab/sabproduct.nsf/214C6E915BB04E14852570CA007A682C/$File/ecadv02001.pdf.*

[31] See, *e.g.,* U.S. EPA. *Screening Methodologies to Support Risk and Technology Reviews (RTR): A Case Study Analysis* (Draft Report, May 2017. (*https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html*).

[32] In the absence of hourly emission data, we develop estimates of maximum hourly emission rates by multiplying the average actual annual emissions rates by a factor (either a category-specific factor or a default factor of 10) to account for variability. This is documented in *Residual Risk Assessment for the SOCMI Source Category in Support of the 2023 Risk and Technology Review Proposed Rule, Residual Risk Assessment for the Polymers & Resins I Neoprene Production Source Category in Support of the 2023 Risk and Technology Review Proposed Rule,* and in Appendix 5 of the report: *Technical Support Document for Acute Risk Screening Assessment.* All three of these documents are available in the docket for this rulemaking.

and that a person is present at the point of maximum exposure.

To characterize the potential health risks associated with estimated acute inhalation exposures to a HAP, we generally use multiple acute dose-response values, including acute RELs, acute exposure guideline levels (AEGLs), and emergency response planning guidelines (ERPG) for 1-hour exposure durations, if available, to calculate acute HQs. The acute HQ is calculated by dividing the estimated acute exposure concentration by the acute dose-response value. For each HAP for which acute dose-response values are available, the EPA calculates acute HQs.

An acute REL is defined as ''the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration.'' [33] Acute RELs are based on the most sensitive, relevant, adverse health effect reported in the peer-reviewed medical and toxicological literature. They are designed to protect the most sensitive individuals in the population through the inclusion of margins of safety. Because margins of safety are incorporated to address data gaps and uncertainties, exceeding the REL does not automatically indicate an adverse health impact. AEGLs represent threshold exposure limits for the general public and are applicable to emergency exposures ranging from 10 minutes to 8 hours.[34] They are guideline levels for ''once-in-a-lifetime, short-term exposures to airborne concentrations of acutely toxic, high-priority chemicals.'' *Id.* at 21. The AEGL–1 is specifically defined as ''the airborne concentration (expressed as ppm (parts per million) or mg/m^3 (milligrams per cubic meter)) of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure.'' The document also notes that ''Airborne concentrations below AEGL–1 represent exposure levels that can produce mild and progressively increasing but transient and nondisabling odor, taste, and sensory irritation or certain asymptomatic, nonsensory effects.'' *Id.* AEGL–2 are defined as ''the airborne concentration (expressed as parts per million or milligrams per cubic meter) of a substance above which it is predicted that the general population, including susceptible individuals, could experience irreversible or other serious, long-lasting adverse health effects or an impaired ability to escape.'' *Id.*

ERPGs are developed, by the American Industrial Hygiene Association (AIHA), for emergency planning and are intended to be health-based guideline concentrations for single exposures to chemicals. The ERPG–1 is the maximum airborne concentration, established by AIHA, below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing other than mild transient adverse health effects or without perceiving a clearly defined, objectionable odor. Similarly, the ERPG–2 is the maximum airborne concentration, established by AIHA, below which it is believed that nearly all individuals could be exposed for up to one hour without experiencing or developing irreversible or other serious health effects or symptoms which could impair an individual's ability to take protective action.

An acute REL for 1-hour exposure durations is typically lower than its corresponding AEGL–1 and ERPG–1. Even though their definitions are slightly different, AEGL–1s are often the same as the corresponding ERPG–1s, and AEGL–2s are often equal to ERPG–2s. The maximum HQs from our acute inhalation screening risk assessment typically result when we use the acute REL for a HAP. In cases where the maximum acute HQ exceeds 1, we also report the HQ based on the next highest acute dose-response value (usually the AEGL–1 and/or the ERPG–1).

For the SOCMI and Neoprene Production source categories, we did not use a default acute emissions multiplier of 10, but rather, we used process level-specific acute emissions multipliers, generally ranging from a factor of 2 to 10 as was done in past chemical and petrochemical residual risk reviews such as for the 2015 the Petroleum Refinery Sector rule, 2020 MON RTR, 2020 EMACT RTR, and 2020 OLD NESHAP RTR, where similar emission sources and standards exist. These refinements are discussed more fully in Appendix 1 of the document titled *Residual Risk Assessment for the SOCMI Source Category in Support of the 2023 Risk and Technology Review Proposed Rule,* which is available in the docket for this rulemaking.

In our acute inhalation screening risk assessment, acute impacts are deemed negligible for HAP for which acute HQs are less than or equal to 1, and no further analysis is performed for these HAP. In cases where an acute HQ from the screening step is greater than 1, we assess the site-specific data to ensure that the acute HQ is at an off-site location. For these source categories, the data refinements employed consisted of reviewing satellite imagery of the locations of the maximum acute HQ values to determine if the maximum was off facility property. For any maximum value that was determined to be on facility property, the next highest value that was off facility property was used. These refinements are discussed more fully in the documents titled *Residual Risk Assessment for the SOCMI Source Category in Support of the 2023 Risk and Technology Review Proposed Rule* and *Residual Risk Assessment for the Polymers & Resins I Neoprene Production Source Category in Support of the 2023 Risk and Technology Review Proposed Rule,* which are available in the docket for this rulemaking.

4. How do we conduct the multipathway exposure and risk screening assessment?

The EPA conducts a tiered screening assessment examining the potential for significant human health risks due to exposures via routes other than inhalation (*i.e.,* ingestion). We first determine whether any sources in the source categories emit any HAP known to be persistent and bioaccumulative in the environment, as identified in the EPA's Air Toxics Risk Assessment Library (see Volume 1, Appendix D, at *https://www.epa.gov/fera/risk-assessment-and-modeling-air-toxics-risk-assessment-reference-library*).

For the Neoprene Production source category, we did not identify emissions of any PB–HAP in the reported emissions inventory. Because we did not identify reported PB–HAP emissions, we could not undertake the three-tier human health risk screening assessment of PB–HAP that we discuss below and which was conducted for the SOCMI source category. However, for dioxins we used the results of the SOCMI source category human health screening assessment at facilities with higher dioxin emission rates than the

[33] CalEPA issues acute RELs as part of its Air Toxics Hot Spots Program, and the 1-hour and 8-hour values are documented in *Air Toxics Hot Spots Program Risk Assessment Guidelines, Part I, The Determination of Acute Reference Exposure Levels for Airborne Toxicants,* which is available at *https://oehha.ca.gov/air/general-info/oehha-acute-8-hour-and-chronic-reference-exposure-level-rel-summary.*

[34] National Academy of Sciences, 2001. *Standing Operating Procedures for Developing Acute Exposure Levels for Hazardous Chemicals,* page 2. Available at *https://www.epa.gov/sites/production/files/2015-09/documents/sop_final_standing_operating_procedures_2001.pdf.* Note that the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances ended in October 2011, but the AEGL program continues to operate at the EPA and works with the National Academies to publish final AEGLs (*https://www.epa.gov/aegl*).

ones proposed for the Neoprene Production source category to qualitatively assess the potential for human health risks.

For the SOCMI source category, we identified PB–HAP emissions of arsenic compounds, cadmium compounds, dioxins, polycyclic organic matter (POM), and mercury, so we proceeded to the next step of the evaluation. Except for lead, the human health risk screening assessment for PB–HAP consists of three progressive tiers. In a Tier 1 screening assessment, we determine whether the magnitude of the facility-specific emissions of PB–HAP warrants further evaluation to characterize human health risk through ingestion exposure. To facilitate this step, we evaluate emissions against previously developed screening threshold emission rates for several PB–HAP that are based on a hypothetical upper-end screening exposure scenario developed for use in conjunction with the EPA's Total Risk Integrated Methodology.Fate, Transport, and Ecological Exposure (TRIM.FaTE) model. The PB–HAP with screening threshold emission rates are arsenic compounds, cadmium compounds, chlorinated dibenzodioxins and furans, mercury compounds, and POM. Based on the EPA estimates of toxicity and bioaccumulation potential, these pollutants represent a conservative list for inclusion in multipathway risk assessments for RTR rules. (See Volume 1, Appendix D at *https://www.epa.gov/sites/production/files/2013-08/documents/volume_1_reflibrary.pdf.*) In this assessment, we compare the facility-specific emission rates of these PB–HAP to the screening threshold emission rates for each PB–HAP to assess the potential for significant human health risks via the ingestion pathway. We call this application of the TRIM.FaTE model the Tier 1 screening assessment. The ratio of a facility's actual emission rate to the Tier 1 screening threshold emission rate is a ''screening value.''

We derive the Tier 1 screening threshold emission rates for these PB–HAP (other than lead compounds) to correspond to a maximum excess lifetime cancer risk of 1-in-1 million (*i.e.,* for arsenic compounds, polychlorinated dibenzodioxins and furans, and POM) or, for HAP that cause noncancer health effects (*i.e.,* cadmium compounds and mercury compounds), a maximum HQ of 1. If the emission rate of any one PB–HAP or combination of carcinogenic PB–HAP in the Tier 1 screening assessment exceeds the Tier 1 screening threshold emission rate for any facility (*i.e.,* the screening value is greater than 1), we conduct a second screening assessment, which we call the Tier 2 screening assessment. The Tier 2 screening assessment separates the Tier 1 combined fisher and farmer exposure scenario into fisher, farmer, and gardener scenarios that retain upper-bound ingestion rates.

In the Tier 2 screening assessment, the location of each facility that exceeds a Tier 1 screening threshold emission rate is used to refine the assumptions associated with the Tier 1 fisher and farmer exposure scenarios at that facility. A key assumption in the Tier 1 screening assessment is that a lake and/or farm is located near the facility. As part of the Tier 2 screening assessment, we use a U.S. Geological Survey (USGS) database to identify actual waterbodies within 50 km (~31 miles) of each facility and assume the fisher only consumes fish from lakes within that 50 km zone. We also examine the differences between local meteorology near the facility and the meteorology used in the Tier 1 screening assessment. We then adjust the previously-developed Tier 1 screening threshold emission rates for each PB–HAP for each facility based on an understanding of how exposure concentrations estimated for the screening scenario change with the use of local meteorology and the USGS lakes database.

In the Tier 2 farmer scenario, we maintain an assumption that the farm is located within 0.5 km (~0.3 miles) of the facility and that the farmer consumes meat, eggs, dairy, vegetables, and fruit produced near the facility. We may further refine the Tier 2 screening analysis by assessing a gardener scenario to characterize a range of exposures, with the gardener scenario being more plausible in RTR evaluations. Under the gardener scenario, we assume the gardener consumes home-produced eggs, vegetables, and fruit products at the same ingestion rate as the farmer. The Tier 2 screen continues to rely on the high-end food intake assumptions that were applied in Tier 1 for local fish (adult female angler at 99th percentile fish consumption [35]) and locally grown or raised foods (90th percentile consumption of locally grown or raised foods for the farmer and gardener scenarios [36]). If PB–HAP emission rates do not result in a Tier 2 screening value greater than 1, we consider those PB–HAP emissions to pose risks below a level of concern. If the PB–HAP emission rates for a facility exceed the Tier 2 screening threshold emission rates, we may conduct a Tier 3 screening assessment.

There are several analyses that can be included in a Tier 3 screening assessment, depending upon the extent of refinement warranted, including validating that the lakes are fishable, locating residential/garden locations for urban and/or rural settings, considering plume-rise to estimate emissions lost above the mixing layer, and considering hourly effects of meteorology and plume-rise on chemical fate and transport (a time-series analysis). If necessary, the EPA may further refine the screening assessment through a site-specific assessment.

In evaluating the potential multipathway risk from emissions of lead compounds, rather than developing a screening threshold emission rate, we compare maximum estimated chronic inhalation exposure concentrations to the level of the current National Ambient Air Quality Standard (NAAQS) for lead.[37] Values below the level of the primary (health-based) lead NAAQS are considered to have a low potential for multipathway risk.

For further information on the multipathway assessment approach, see the documents titled *Residual Risk Assessment for the SOCMI Source Category in Support of the 2023 Risk and Technology Review Proposed Rule* and *Residual Risk Assessment for the Polymers & Resins I Neoprene Production Source Category in Support of the 2023 Risk and Technology Review Proposed Rule,* which are available in the docket for this rulemaking.

5. How do we assess risks considering emissions control options?

In addition to assessing baseline inhalation risks and screening for potential multipathway risks, we also estimate risks considering the potential

[35] Burger, J. 2002. *Daily consumption of wild fish and game: Exposures of high end recreationists. International Journal of Environmental Health Research,* 12:343–354.

[36] U.S. EPA. *Exposure Factors Handbook 2011 Edition (Final).* U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–09/052F, 2011.

[37] In doing so, the EPA notes that the legal standard for a primary NAAQS—that a standard is requisite to protect public health and provide an adequate margin of safety (CAA section 109(b))—differs from the CAA section 112(f) standard (requiring, among other things, that the standard provide an ''ample margin of safety to protect public health''). However, the primary lead NAAQS is a reasonable measure of determining risk acceptability (*i.e.,* the first step of the 1989 Benzene NESHAP analysis) since it is designed to protect the most susceptible group in the human population—children, including children living near major lead emitting sources. 73 FR 67002/3; 73 FR 67000/3; 73 FR 67005/1. In addition, applying the level of the primary lead NAAQS at the risk acceptability step is conservative, since that primary lead NAAQS reflects an adequate margin of safety.

emission reductions that would be achieved by the control options under consideration. In these cases, the expected emission reductions are applied to the specific HAP and emission points in the RTR emissions dataset to develop corresponding estimates of risk and incremental risk reductions.

6. How do we conduct the environmental risk screening assessment?

a. Adverse Environmental Effect, Environmental HAP, and Ecological Benchmarks

The EPA conducts a screening assessment to examine the potential for an adverse environmental effect as required under section 112(f)(2)(A) of the CAA. Section 112(a)(7) of the CAA defines ''adverse environmental effect'' as ''any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.''

The EPA focuses on eight HAP, which are referred to as ''environmental HAP,'' in its screening assessment: six PB–HAP and two acid gases. The PB–HAP included in the screening assessment are arsenic compounds, cadmium compounds, dioxins/furans, POM, mercury (both inorganic mercury and methyl mercury), and lead compounds. The acid gases included in the screening assessment are hydrochloric acid (HCl) and hydrofluoric acid (HF).

HAP that persist and bioaccumulate are of particular environmental concern because they accumulate in the soil, sediment, and water. The acid gases, HCl and HF, are included due to their well-documented potential to cause direct damage to terrestrial plants. In the environmental risk screening assessment, we evaluate the following four exposure media: terrestrial soils, surface water bodies (includes water-column and benthic sediments), fish consumed by wildlife, and air. Within these four exposure media, we evaluate nine ecological assessment endpoints, which are defined by the ecological entity and its attributes. For PB–HAP (other than lead), both community-level and population-level endpoints are included. For acid gases, the ecological assessment evaluated is terrestrial plant communities.

An ecological benchmark represents a concentration of HAP that has been linked to a particular environmental effect level. For each environmental HAP, we identified the available ecological benchmarks for each assessment endpoint. We identified, where possible, ecological benchmarks at the following effect levels: probable effect levels, lowest-observed-adverse-effect level, and no-observed-adverse-effect level. In cases where multiple effect levels were available for a particular PB–HAP and assessment endpoint, we use all of the available effect levels to help us to determine whether ecological risks exist and, if so, whether the risks could be considered significant and widespread.

For further information on how the environmental risk screening assessment was conducted, including a discussion of the risk metrics used, how the environmental HAP were identified, and how the ecological benchmarks were selected, see Appendix 9 of the documents titled *Residual Risk Assessment for the SOCMI Source Category in Support of the 2023 Risk and Technology Review Proposed Rule* and *Residual Risk Assessment for the Polymers & Resins I Neoprene Production Source Category in Support of the 2023 Risk and Technology Review Proposed Rule,* which are available in the docket for this rulemaking.

b. Environmental Risk Screening Methodology

For the environmental risk screening assessment, the EPA first determined whether any facilities in the SOCMI and Neoprene Production source categories emitted any of the environmental HAP. For the Neoprene Production source category, we did not identify reported emissions of any of the six environmental HAP included in the screen. Because we did not identify reported environmental HAP emissions from the neoprene source category, we could not proceed to the second step of the evaluation as discussed below for the HON. However, for dioxins we used the results of the SOCMI source category environmental risk screening assessment at facilities with higher dioxin emission rates than the ones proposed for the Neoprene Production source category to qualitative assess the potential for adverse environmental effects.

For the SOCMI source category, we identified reported emissions of arsenic compounds, cadmium compounds, dioxins, POM, and mercury.[38] Because one or more of the environmental HAP evaluated are emitted by at least one facility in the SOCMI source category, we proceeded to the second step of the evaluation.

c. PB–HAP Methodology

The environmental screening assessment includes six PB–HAP, arsenic compounds, cadmium compounds, dioxins/furans, POM, mercury (both inorganic mercury and methyl mercury), and lead compounds. With the exception of lead, the environmental risk screening assessment for PB–HAP consists of three tiers. The first tier of the environmental risk screening assessment uses the same health-protective conceptual model that is used for the Tier 1 human health screening assessment. TRIM.FaTE model simulations were used to back-calculate Tier 1 screening threshold emission rates. The screening threshold emission rates represent the emission rate in tons of pollutant per year that results in media concentrations at the facility that equal the relevant ecological benchmark. To assess emissions from each facility in the category, the reported emission rate for each PB–HAP was compared to the Tier 1 screening threshold emission rate for that PB–HAP for each assessment endpoint and effect level. If emissions from a facility do not exceed the Tier 1 screening threshold emission rate, the facility ''passes'' the screening assessment, and, therefore, is not evaluated further under the screening approach. If emissions from a facility exceed the Tier 1 screening threshold emission rate, we evaluate the facility further in Tier 2.

In Tier 2 of the environmental screening assessment, the screening threshold emission rates are adjusted to account for local meteorology and the actual location of lakes in the vicinity of facilities that did not pass the Tier 1 screening assessment. For soils, we evaluate the average soil concentration for all soil parcels within a 7.5-km radius for each facility and PB–HAP. For the water, sediment, and fish tissue concentrations, the highest value for each facility for each pollutant is used. If emission concentrations from a facility do not exceed the Tier 2 screening threshold emission rate, the facility ''passes'' the screening assessment and typically is not evaluated further. If emissions from a facility exceed the Tier 2 screening threshold emission rate, we evaluate the facility further in Tier 3.

As in the multipathway human health risk assessment, in Tier 3 of the environmental screening assessment, we examine the suitability of the lakes

[38] We note that in many instances, we did not have sufficient information to parse out emissions from HON processes from facility-wide emissions inventories, thus we took a conservative approach and modeled facility-wide emissions as if they were all from the SOCMI source category.

around the facilities to support life and remove those that are not suitable (*e.g.,* lakes that have been filled in or are industrial ponds), adjust emissions for plume-rise, and conduct hour-by-hour time-series assessments. If these Tier 3 adjustments to the screening threshold emission rates still indicate the potential for an adverse environmental effect (*i.e.,* facility emission rate exceeds the screening threshold emission rate), we may elect to conduct a more refined assessment using more site-specific information. If, after additional refinement, the facility emission rate still exceeds the screening threshold emission rate, the facility may have the potential to cause an adverse environmental effect.

To evaluate the potential for an adverse environmental effect from lead, we compared the average modeled air concentrations (from HEM–3) of lead around each facility in the source category to the level of the secondary NAAQS for lead. The secondary lead NAAQS is a reasonable means of evaluating environmental risk because it is set to provide substantial protection against adverse welfare effects which can include ''effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.''

d. Acid Gas Environmental Risk Methodology

The environmental screening assessment for acid gases evaluates the potential phytotoxicity and reduced productivity of plants due to chronic exposure to HF and HCl. The environmental risk screening methodology for acid gases is a single-tier screening assessment that compares modeled ambient air concentrations (from AERMOD) to the ecological benchmarks for each acid gas. To identify a potential adverse environmental effect (as defined in section 112(a)(7) of the CAA) from emissions of HF and HCl, we evaluate the following metrics: the size of the modeled area around each facility that exceeds the ecological benchmark for each acid gas, in acres and square km; the percentage of the modeled area around each facility that exceeds the ecological benchmark for each acid gas; and the area-weighted average screening value around each facility (calculated by dividing the area-weighted average concentration over the 50-km modeling domain by the ecological benchmark for each acid gas). For further information on the environmental screening assessment approach, see Appendix 9 of the documents titled *Residual Risk Assessment for the SOCMI Source Category in Support of the 2023 Risk and Technology Review Proposed Rule* and *Residual Risk Assessment for the Polymers & Resins I Neoprene Production Source Category in Support of the 2023 Risk and Technology Review Proposed Rule,* which are available in the docket for this rulemaking.

7. How do we conduct facility-wide assessments?

To put the source category risks in context, we typically examine the risks from the entire ''facility,'' where the facility includes all HAP-emitting operations within a contiguous area and under common control. In other words, we examine the HAP emissions not only from the source category emission points of interest, but also emissions of HAP from all other emission sources at the facility for which we have data. For these source categories, we conducted the facility-wide assessment using a dataset compiled from the 2017 NEI and other emissions information discussed in section II.C of this preamble. Once a quality assured source category dataset was available, it was placed back with the remaining records from the emissions inventory for that facility (which in most instances was 2017 NEI data). The facility-wide file was then used to analyze risks due to the inhalation of HAP that are emitted ''facility-wide'' for the populations residing within 50 km (~31 miles) of each facility, consistent with the methods used for the source category analysis described above. For these facility-wide risk analyses, the modeled source category risks were compared to the facility-wide risks to determine the portion of the facility-wide risks that could be attributed to the source category addressed in this proposal. We also specifically examined the facility that was associated with the highest estimate of risk and determined the percentage of that risk attributable to the source category of interest. The documents titled *Residual Risk Assessment for the SOCMI Source Category in Support of the 2023 Risk and Technology Review Proposed Rule* and *Residual Risk Assessment for the Polymers & Resins I Neoprene Production Source Category in Support of the 2023 Risk and Technology Review Proposed Rule,* available through the docket for this rulemaking, provide the methodology and results of the facility-wide analyses, including all facility-wide risks and the percentage of source category contribution to facility-wide risks.

8. How do we conduct community-based risk assessments?

In addition to the source category and facility-wide risk assessments, we also assessed the combined inhalation cancer risk from all local stationary sources of HAP for which we have emissions data. Specifically, we combined the modeled impacts from the facility-wide assessment (which includes category and non-category sources) with other nearby stationary point source model results. The facility-wide emissions used in this assessment are discussed in section II.C of this preamble. For the other nearby point sources, we used AERMOD model results with emissions based primarily on the 2018 NEI. After combining these model results, we assessed cancer risks due to the inhalation of all HAP emitted by point sources for the populations residing within 10 km (~6.2 miles) of HON facilities. In the community-based risk assessment, the modeled source category and facility-wide cancer risks were compared to the cancer risks from other nearby point sources to determine the portion of the risks that could be attributed to the source category addressed in this proposal. The document titled *Residual Risk Assessment for the SOCMI Source Category in Support of the 2023 Risk and Technology Review Proposed Rule,* which is available in the docket for this rulemaking, provides the methodology and results of the community-based risks analyses.

9. How do we consider uncertainties in risk assessment?

Uncertainty and the potential for bias are inherent in all risk assessments, including those performed for this proposal. Although uncertainty exists, we believe that our approach, which used conservative tools and assumptions, ensures that our decisions are health and environmentally protective. A brief discussion of the uncertainties in the RTR emissions datasets, dispersion modeling, inhalation exposure estimates, and dose-response relationships follows below. Also included are those uncertainties specific to our acute screening assessments, multipathway screening assessments, and our environmental risk screening assessments. A more thorough discussion of these uncertainties is included in the documents titled *Residual Risk Assessment for the SOCMI Source Category in Support of the 2023 Risk and Technology Review*

Proposed Rule and *Residual Risk Assessment for the Polymers & Resins I Neoprene Production Source Category in Support of the 2023 Risk and Technology Review Proposed Rule,* which are available in the docket for this rulemaking. If a multipathway site-specific assessment was performed for these source categories, a full discussion of the uncertainties associated with that assessment can be found in Appendix 11 of that document, *Site-Specific Human Health Multipathway Residual Risk Assessment Report.*

a. Uncertainties in the RTR Emissions Datasets

Although the development of the RTR emissions datasets involved quality assurance/quality control processes, the accuracy of emissions values will vary depending on the source of the data, the degree to which data are incomplete or missing, the degree to which assumptions made to complete the datasets are accurate, errors in emission estimates, and other factors. The emission estimates considered in this analysis generally are annual totals for certain years, and they do not reflect short-term fluctuations during the course of a year or variations from year to year. The estimates of peak hourly emission rates for the acute effects screening assessment were based on an emission adjustment factor applied to the average annual hourly emission rates, which are intended to account for emission fluctuations due to normal facility operations.

b. Uncertainties in Dispersion Modeling

We recognize there is uncertainty in ambient concentration estimates associated with any model, including the EPA's recommended regulatory dispersion model, AERMOD. In using a model to estimate ambient pollutant concentrations, the user chooses certain options to apply. For RTR assessments, we select some model options that have the potential to overestimate ambient air concentrations (*e.g.,* not including plume depletion or pollutant transformation). We select other model options that have the potential to underestimate ambient impacts (*e.g.,* not including building downwash). Other options that we select have the potential to either under- or overestimate ambient levels (*e.g.,* meteorology and receptor locations). On balance, considering the directional nature of the uncertainties commonly present in ambient concentrations estimated by dispersion models, the approach we apply in the RTR assessments should yield unbiased estimates of ambient HAP concentrations. We also note that the selection of meteorology dataset location could have an impact on the risk estimates. As we continue to update and expand our library of meteorological station data used in our risk assessments, we expect to reduce this variability.

c. Uncertainties in Inhalation Exposure Assessment

Although every effort is made to identify all of the relevant facilities and emission points, as well as to develop accurate estimates of the annual emission rates for all relevant HAP, the uncertainties in our emission inventory likely dominate the uncertainties in the exposure assessment. Some uncertainties in our exposure assessment include human mobility, using the centroid of each census block, assuming lifetime exposure, and assuming only outdoor exposures. For most of these factors, there is neither an under nor overestimate when looking at the maximum individual risk or the incidence, but the shape of the distribution of risks may be affected. With respect to outdoor exposures, actual exposures may not be as high if people spend time indoors, especially for very reactive pollutants or larger particles. For all factors, we reduce uncertainty when possible. For example, with respect to census-block centroids, we analyze large blocks using aerial imagery and adjust locations of the block centroids to better represent the population in the blocks. We also add additional receptor locations where the population of a block is not well represented by a single location.

d. Uncertainties in Dose-Response Relationships

There are uncertainties inherent in the development of the dose-response values used in our risk assessments for cancer effects from chronic exposures and noncancer effects from both chronic and acute exposures. Some uncertainties are generally expressed quantitatively, and others are generally expressed in qualitative terms. We note, as a preface to this discussion, a point on dose-response uncertainty that is stated in the EPA's *2005 Guidelines for Carcinogen Risk Assessment;* namely, that ''the primary goal of EPA actions is protection of human health; accordingly, as an Agency policy, risk assessment procedures, including default options that are used in the absence of scientific data to the contrary, should be health protective'''(the EPA's *2005 Guidelines for Carcinogen Risk Assessment,* page 1–7). This is the approach followed here as summarized in the next paragraphs.

Cancer UREs used in our risk assessments are those that have been developed to generally provide an upper bound estimate of risk.[39] That is, they represent a ''plausible upper limit to the true value of a quantity'' (although this is usually not a true statistical confidence limit). In some circumstances, the true risk could be as low as zero; however, in other circumstances the risk could be greater.[40] Chronic noncancer RfC and reference dose values represent chronic exposure levels that are intended to be health-protective levels. To derive dose-response values that are intended to be ''without appreciable risk,'' the methodology relies upon an uncertainty factor (UF) approach,[41] which considers uncertainty, variability, and gaps in the available data. The UFs are applied to derive dose-response values that are intended to protect against appreciable risk of deleterious effects.

Many of the UFs used to account for variability and uncertainty in the development of acute dose-response values are quite similar to those developed for chronic durations. Additional adjustments are often applied to account for uncertainty in extrapolation from observations at one exposure duration (*e.g.,* 4 hours) to derive an acute dose-response value at another exposure duration (*e.g.,* 1 hour). Not all acute dose-response values are developed for the same purpose, and care must be taken when interpreting the results of an acute assessment of human health effects relative to the dose-response value or values being exceeded. Where relevant to the estimated exposures, the lack of acute dose-response values at different levels of severity should be factored into the risk characterization as potential uncertainties.

Uncertainty also exists in the selection of ecological benchmarks for the environmental risk screening assessment. We established a hierarchy of preferred benchmark sources to allow selection of benchmarks for each environmental HAP at each ecological assessment endpoint. We searched for

[39] IRIS glossary (*https://ofmpub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&glossaryName=IRIS%20Glossary*).

[40] An exception to this is the URE for benzene, which is considered to cover a range of values, each end of which is considered to be equally plausible, and which is based on maximum likelihood estimates.

[41] See *A Review of the Reference Dose and Reference Concentration Processes,* U.S. EPA, December 2002, and *Methods for Derivation of Inhalation Reference Concentrations and Application of Inhalation Dosimetry,* U.S. EPA, 1994.

benchmarks for three effect levels (*i.e.,* no-effects level, threshold-effect level, and probable effect level), but not all combinations of ecological assessment/environmental HAP had benchmarks for all three effect levels. Where multiple effect levels were available for a particular HAP and assessment endpoint, we used all of the available effect levels to help us determine whether risk exists and whether the risk could be considered significant and widespread.

Although we make every effort to identify appropriate human health effect dose-response values for all pollutants emitted by the sources in this risk assessment, some HAP emitted by these source categories are lacking dose-response assessments. Accordingly, these pollutants cannot be included in the quantitative risk assessment, which could result in quantitative estimates understating HAP risk. To help to alleviate this potential underestimate, where we conclude similarity with a HAP for which a dose-response value is available, we use that value as a surrogate for the assessment of the HAP for which no value is available. To the extent use of surrogates indicates appreciable risk, we may identify a need to increase priority for an IRIS assessment for that substance. We additionally note that, generally speaking, HAP of greatest concern due to environmental exposures and hazard are those for which dose-response assessments have been performed, reducing the likelihood of understating risk. Further, HAP not included in the quantitative assessment are assessed qualitatively and considered in the risk characterization that informs the risk management decisions, including consideration of HAP reductions achieved by various control options.

For a group of compounds that are unspeciated (*e.g.,* groups of compounds that we do not know the exact composition of like glycol ethers), we conservatively use the most protective dose-response value of an individual compound in that group to estimate risk. Similarly, for an individual compound in a group (*e.g.,* ethylene glycol diethyl ether) that does not have a specified dose-response value, we also apply the most protective dose-response value from the other compounds in the group to estimate risk.

e. Uncertainties in Acute Inhalation Screening Assessments

In addition to the uncertainties highlighted above, there are several factors specific to the acute exposure assessment that the EPA conducts as part of the risk review under section 112 of the CAA. The accuracy of an acute inhalation exposure assessment depends on the simultaneous occurrence of independent factors that may vary greatly, such as hourly emissions rates, meteorology, and the presence of a person. In the acute screening assessment that we conduct under the RTR program, we assume that peak emissions from the source category and reasonable worst-case air dispersion conditions (*i.e.,* 99th percentile) co-occur. We then include the additional assumption that a person is located at this point at the same time. Together, these assumptions represent a reasonable worst-case actual exposure scenario. In most cases, it is unlikely that a person would be located at the point of maximum exposure during the time when peak emissions and reasonable worst-case air dispersion conditions occur simultaneously.

f. Uncertainties in the Multipathway and Environmental Risk Screening Assessments

For each source category, we generally rely on site-specific levels of PB–HAP or environmental HAP emissions to determine whether a refined assessment of the impacts from multipathway exposures is necessary or whether it is necessary to perform an environmental screening assessment. This determination is based on the results of a three-tiered screening assessment that relies on the outputs from models—TRIM.FaTE and AERMOD—that estimate environmental pollutant concentrations and human exposures for five PB–HAP (dioxins, POM, mercury, cadmium, and arsenic) and two acid gases (HF and HCl). For lead, we use AERMOD to determine ambient air concentrations, which are then compared to the secondary NAAQS standard for lead. Two important types of uncertainty associated with the use of these models in RTR risk assessments and inherent to any assessment that relies on environmental modeling are model uncertainty and input uncertainty.[42]

Model uncertainty concerns whether the model adequately represents the actual processes (*e.g.,* movement and accumulation) that might occur in the environment. For example, does the model adequately describe the movement of a pollutant through the soil? This type of uncertainty is difficult to quantify. However, based on feedback received from previous EPA SAB reviews and other reviews, we are confident that the models used in the screening assessments are appropriate and state-of-the-art for the multipathway and environmental screening risk assessments conducted in support of RTRs.

Input uncertainty is concerned with how accurately the models have been configured and parameterized for the assessment at hand. For Tier 1 of the multipathway and environmental screening assessments, we configured the models to avoid underestimating exposure and risk. This was accomplished by selecting upper-end values from nationally representative datasets for the more influential parameters in the environmental model, including selection and spatial configuration of the area of interest, lake location and size, meteorology, surface water, soil characteristics, and structure of the aquatic food web. We also assume an ingestion exposure scenario and values for human exposure factors that represent reasonable maximum exposures.

In Tier 2 of the multipathway and environmental screening assessments, we refine the model inputs to account for meteorological patterns in the vicinity of the facility versus using upper-end national values, and we identify the actual location of lakes near the facility rather than the default lake location that we apply in Tier 1. By refining the screening approach in Tier 2 to account for local geographical and meteorological data, we decrease the likelihood that concentrations in environmental media are overestimated, thereby increasing the usefulness of the screening assessment. In Tier 3 of the screening assessments, we refine the model inputs again to account for hour-by-hour plume-rise and the height of the mixing layer. We can also use those hour-by-hour meteorological data in a TRIM.FaTE run using the screening configuration corresponding to the lake location. These refinements produce a more accurate estimate of chemical concentrations in the media of interest, thereby reducing the uncertainty with those estimates. The assumptions and the associated uncertainties regarding the selected ingestion exposure scenario are the same for all three tiers.

For the environmental screening assessment for acid gases, we employ a single-tiered approach. We use the modeled air concentrations and compare those with ecological benchmarks.

For all tiers of the multipathway and environmental screening assessments,

[42] In the context of this discussion, the term ''uncertainty'' as it pertains to exposure and risk encompasses both *variability* in the range of expected inputs and screening results due to existing spatial, temporal, and other factors, as well as *uncertainty* in being able to accurately estimate the true result.

our approach to addressing model input uncertainty is generally cautious. We choose model inputs from the upper end of the range of possible values for the influential parameters used in the models, and we assume that the exposed individual exhibits ingestion behavior that would lead to a high total exposure. This approach reduces the likelihood of not identifying high risks for adverse impacts.

Despite the uncertainties, when individual pollutants or facilities do not exceed screening threshold emission rates (*i.e.,* screen out), we are confident that the potential for adverse multipathway impacts on human health is very low. On the other hand, when individual pollutants or facilities do exceed screening threshold emission rates, it does not mean that impacts are significant, only that we cannot rule out that possibility and that a refined assessment for the site might be necessary to obtain a more accurate risk characterization for the source category.

The EPA evaluates the following HAP in the multipathway and/or environmental risk screening assessments, where applicable: arsenic, cadmium, dioxins/furans, lead, mercury (both inorganic and methyl mercury), POM, HCl, and HF. These HAP represent pollutants that can cause adverse impacts either through direct exposure to HAP in the air or through exposure to HAP that are deposited from the air onto soils and surface waters and then through the environment into the food web. These HAP represent those HAP for which we can conduct a meaningful multipathway or environmental screening risk assessment. For other HAP not included in our screening assessments, the model has not been parameterized such that it can be used for that purpose. In some cases, depending on the HAP, we may not have appropriate multipathway models that allow us to predict the concentration of that pollutant. The EPA acknowledges that other HAP beyond these that we are evaluating may have the potential to cause adverse effects and, therefore, the EPA may evaluate other relevant HAP in the future, as modeling science and resources allow.

G. How does the EPA perform the NESHAP technology review and NSPS review?

1. NESHAP Technology Review

Our technology review primarily focuses on the identification and evaluation of developments in practices, processes, and control technologies that have occurred since the previous HON, P&R I, and P&R II technology reviews were promulgated. Where we identify such developments, we analyze their technical feasibility, estimated costs, energy implications, and non-air environmental impacts. We also consider the emission reductions associated with applying each development. This analysis informs our decision of whether it is ''necessary'' to revise the CAA section 112 emissions standards. In addition, we consider the appropriateness of applying controls to new sources versus retrofitting existing sources. For this exercise, we consider any of the following to be a ''development'':

- Any add-on control technology or other equipment that was not identified and considered during development of the original MACT standards;
- Any improvements in add-on control technology or other equipment (that were identified and considered during development of the original MACT standards) that could result in additional emissions reduction;
- Any work practice or operational procedure that was not identified or considered during development of the original MACT standards;
- Any process change or pollution prevention alternative that could be broadly applied to the industry and that was not identified or considered during development of the original MACT standards; and
- Any significant changes in the cost (including cost effectiveness) of applying controls (including controls the EPA considered during the development of the original MACT standards).

In addition to reviewing the practices, processes, and control technologies that were considered at the time we originally developed the HON, P&R I, and P&R II, we review a variety of data sources in our investigation of potential practices, processes, or controls to consider. We also review the NESHAP and the available data to determine if there are any unregulated emissions of HAP within the source categories, and evaluate these data for use in developing new emission standards. When reviewing MACT standards, we also address regulatory gaps, such as missing standards for listed air toxics known to be emitted from the source category. See sections II.C and II.D of this preamble for information on the specific data sources that were reviewed as part of the technology review.

2. NSPS Review

As noted in the section II.A.2 of this preamble, CAA section 111 requires the EPA, at least every 8 years to review and, if appropriate revise the standards of performance applicable to new, modified, and reconstructed sources. If the EPA determines that it is appropriate to review the standards of performance, the revised standards must reflect the degree of emission limitation achievable through the application of the BSER considering the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements. CAA section 111(a)(1).

In reviewing an NSPS to determine whether it is ''appropriate'' to revise the standards of performance, the EPA evaluates the statutory factors, which may include consideration of the following information:

- Expected growth for the source category, including how many new facilities, reconstructions, and modifications may trigger NSPS in the future.
- Pollution control measures, including advances in control technologies, process operations, design or efficiency improvements, or other systems of emission reduction, that are ''adequately demonstrated'' in the regulated industry.
- Available information from the implementation and enforcement of current requirements indicating that emission limitations and percent reductions beyond those required by the current standards are achieved in practice.
- Costs (including capital and annual costs) associated with implementation of the available pollution control measures.
- The amount of emission reductions achievable through application of such pollution control measures.
- Any non-air quality health and environmental impact and energy requirements associated with those control measures.

In evaluating whether the cost of a particular system of emission reduction is reasonable, the EPA considers various costs associated with the particular air pollution control measure or a level of control, including capital costs and operating costs, and the emission reductions that the control measure or particular level of control can achieve. The Agency considers these costs in the context of the industry's overall capital expenditures and revenues. The Agency also considers cost-effectiveness analysis as a useful metric and a means of evaluating whether a given control achieves emission reduction at a reasonable cost. A cost-effectiveness analysis allows comparisons of relative costs and outcomes (effects) of two or more options. In general, cost-effectiveness is a measure of the

outcomes produced by resources spent. In the context of air pollution control options, cost effectiveness typically refers to the annualized cost of implementing an air pollution control option divided by the amount of pollutant reductions realized annually.

After the EPA evaluates the statutory factors, the EPA compares the various systems of emission reductions and determines which system is ''best,'' and therefore represents the BSER. The EPA then establishes a standard of performance that reflects the degree of emission limitation achievable through the implementation of the BSER. In doing this analysis, the EPA can determine whether subcategorization is appropriate based on classes, types, and sizes of sources, and may identify a different BSER and establish different performance standards for each subcategory. The result of the analysis and BSER determination leads to standards of performance that apply to facilities that begin construction, reconstruction, or modification after the date of publication of the proposed standards in the **Federal Register**. Because the NSPS reflect the BSER under conditions of proper operation and maintenance, in doing its review, the EPA also evaluates and determines the proper testing, monitoring, recordkeeping and reporting requirements needed to ensure compliance with the emission standards.

See section II.C of this preamble for information on the specific data sources that were reviewed as part of this action.

III. Proposed Rule Summary and Rationale

A. What are the results of the risk assessment and analyses?

As previously discussed, we conducted risk assessments for the SOCMI and Neoprene Production (within P&R I) source categories. We previously identified EtO as a cancer risk driver from facilities with HON-subject processes in the first risk assessment we conducted in 2006. However, the EPA's IRIS inhalation URE for EtO was revised in 2016,[43] based on new data, showing EtO to be more carcinogenic than previously understood (*i.e.,* resulting in a URE 60 times greater than the previous URE over a 70-year lifetime). Additionally, the EPA's IRIS inhalation URE for chloroprene was finalized in 2010 (there was no previous URE).[44] Chloroprene is emitted from some HON-subject processes (*e.g.,* chloroprene production, other chlorinated SOCMI chemical production processes), but is mostly emitted from neoprene production processes subject to P&R I. We briefly present results of the risk assessments below and in more detail in the documents titled *Residual Risk Assessment for the SOCMI Source Category in Support of the 2023 Risk and Technology Review Proposed Rule* and *Residual Risk Assessment for the Polymers & Resins I Neoprene Production Source Category in Support of the 2023 Risk and Technology Review Proposed Rule,* which are available in the docket for this rulemaking.

1. Chronic Inhalation Risk Assessment Results

a. SOCMI Source Category

The results of the chronic baseline inhalation cancer risk assessment, which are estimated using modeling and is the case for all risk results presented here and in subsequent sections, indicate that, based on estimates of current actual and allowable emissions, the MIR posed by the source category is 2,000-in-1 million, driven by EtO emissions from PRDs (74 percent) and equipment leaks (20 percent). The total estimated cancer incidence based on actual and allowable emission levels is 2 excess cancer cases per year. EtO emissions contribute 89 percent of the total cancer incidence. Within 50 km (~31 miles) of HON-subject facilities, the population exposed to cancer risk greater than 100-in-1 million for HON actual and allowable emissions is approximately 87,000 people, and the population exposed to cancer risk greater than or equal to 1-in-1 million is approximately 7.2 million people. Of the 195 facilities that were assessed for risk, 8 facilities have an estimated maximum cancer risk greater than 100-in-1 million. In addition, the maximum modeled chronic noncancer TOSHI for the source category based on actual and allowable emissions is estimated to be 2 (for respiratory effects) at two different facilities (from maleic anhydride emissions at one facility and chlorine emissions at another facility). Approximately 83 people are estimated to be exposed to a TOSHI greater than 1. See Table 1 of this preamble for a summary of the HON inhalation risk assessment results.

TABLE 1—SOCMI SOURCE CATEGORY INHALATION RISK ASSESSMENT RESULTS BASED ON ACTUAL AND ALLOWABLE EMISSIONS [1]

Risk assessment	Number of facilities [2]	Maximum individual cancer risk (-in-1 million) [3]	Estimated population at increased risk of cancer		Estimated annual cancer incidence (cases per year)	Maximum chronic noncancer TOSHI	Refined maximum screening acute noncancer HQ
			>100-in-1 million	≥1-in-1 million			
SOCMI Source Category.	195	2,000	87,000 (50 km) ...	7.2 million (50 km).	2	2 (maleic anhydride) 2 (chlorine)	HQ_{REL} = 3 (chlorine). HQ_{REL} = 3 (acrolein).
Facility-wide [4]	195	2,000	95,000 (50 km) ...	8.9 million (50 km).	2	4 (chlorine, acrylic acid, and acrylonitrile).	

[1] Actual emissions equal allowable emissions; therefore, actual risks equal allowable risks.
[2] There are 207 HON facilities; however, only 195 of these facilities are included in the risk assessment based on available data, which corresponds to 222 Emission Information System (EIS) facility IDs.
[3] Maximum individual excess lifetime cancer risk due to HAP emissions.
[4] See ''Facility-Wide Risk Results'' in section III.A.5 of this preamble for more details on this risk assessment.

[43] U.S. EPA. *Evaluation of the Inhalation Carcinogenicity of Ethylene Oxide (CASRN 75–21–8) In Support of Summary Information on the Integrated Risk Information System (IRIS).* December 2016. EPA/635/R–16/350Fa. Available at: *https://cfpub.epa.gov/ncea/iris/iris_documents/documents/toxreviews/1025tr.pdf.*

[44] U.S. EPA. *Toxicological Review of Chloroprene (CASRN 126–99–8) In Support of Summary Information on the Integrated Risk Information System (IRIS).* September 2010. EPA/635/R–09/010F. Available at: *https://iris.epa.gov/static/pdfs/1021tr.pdf.*

b. Neoprene Production Source Category

The results of the chronic baseline inhalation cancer risk assessment indicate that, based on estimates of current actual and allowable emissions, the MIR posed by the Neoprene Production source category within P&R I is 500-in-1 million, driven by chloroprene emissions from maintenance vents (67 percent), storage vessels (11 percent), wastewater (8 percent), and equipment leaks (4 percent).[45] The total estimated cancer incidence based on actual and allowable emission levels is 0.05 excess cancer cases per year, or 1 cancer case every 20 years. Within 50 km (~31 miles) of the one facility in this source category, the population exposed to cancer risks greater than 100-in-1 million for actual and allowable emissions is approximately 2,100 people, and the population exposed to cancer risks greater than or equal to 1-in-1 million is approximately 690,000 people. In addition, the maximum modeled chronic noncancer TOSHI for the source category based on actual and allowable emissions is estimated to be 0.05 (for respiratory effects) from chloroprene emissions. See Table 2 of this preamble for a summary of the neoprene production inhalation risk assessment results.

TABLE 2—NEOPRENE PRODUCTION SOURCE CATEGORY INHALATION RISK ASSESSMENT RESULTS BASED ON ACTUAL AND ALLOWABLE EMISSIONS [1]

Risk assessment	Number of facilities [2]	Maximum individual cancer risk (-in-1 million) [3]	Estimated population at increased risk of cancer		Estimated annual cancer incidence (cases per year)	Maximum chronic noncancer TOSHI	Maximum screening acute noncancer HQ
			>100-in-1 million	≥1-in-1 million			
Neoprene Production Source Category.	1	500	2,100 (50 km)	690,000 (50 km)	0.05	0.05 (chloroprene) ..	HQ_{REL} = 0.3 (chloroform).
Facility-wide [4]	1	600	2,300 (50 km)	890,000 (50 km)	0.06	0.3 (chlorine).	

[1] Actual emissions equal allowable emissions; therefore, actual risks equal allowable risks.
[2] Number of facilities evaluated in the risk analysis.
[3] Maximum individual excess lifetime cancer risk due to HAP emissions.
[4] See ''Facility-Wide Risk Results'' in section III.A.5 of this preamble for more details on this risk assessment.

2. Screening Level Acute Risk Assessment Results

a. SOCMI Source Category

As presented in Table 1 of this preamble, the estimated worst-case off-site acute exposures to emissions from the SOCMI source category result in a maximum modeled acute noncancer HQ of 3 based on the RELs for chlorine and acrolein. HON process emissions from two other facilities result in acute noncancer HQs of 2 based on the RELs for formaldehyde and chloroform. Detailed information about the assessment, including evaluation of the screening-level acute risk assessment results, is provided in the main body and Appendix 10 of the document titled *Residual Risk Assessment for the SOCMI Source Category in Support of the 2023 Risk and Technology Review Proposed Rule,* which is available in the docket for this rulemaking.

b. Neoprene Production Source Category

As presented in Table 2 of this preamble, the estimated worst-case acute exposures to emissions from the Neoprene Production source category result in a maximum modeled acute noncancer HQ of 0.3 based on the REL for chloroform. Detailed information about the assessment is provided in the document titled *Residual Risk Assessment for the Polymers & Resins I Neoprene Production Source Category in Support of the 2023 Risk and Technology Review Proposed Rule,* which is available in the docket for this rulemaking.

3. Multipathway Risk Screening Results

a. SOCMI Source Category

For the SOCMI source category, 71 facilities emitted at least 1 PB–HAP, including arsenic, cadmium, dioxins, mercury, and POMs.[46] Emissions of these PB–HAP from each facility were compared to the respective pollutant-specific Tier 1 screening emission thresholds. The Tier 1 screening analysis indicated 9 facilities exceeded the Tier 1 emission threshold for arsenic, 3 facilities for cadmium, 9 facilities for dioxins, 9 facilities for mercury, and 20 facilities for POM.

For facilities that exceeded the Tier 1 multipathway screening threshold emission rate for one or more PB–HAP, we used additional facility site-specific information to perform a Tier 2 multipathway risk screening assessment. The Tier 2 assessment resulted in a maximum Tier 2 noncancer screening value of 60 from methyl mercury and 2 for cadmium based on the fisher scenario and a cancer screening value of 100 from POM for the gardener scenario. The Tier 2 assessment indicated the maximum arsenic and dioxin cancer screening values were 30 and 2, respectively, for the gardener scenario, and therefore no further screening was performed.

For mercury and cadmium, a Tier 3 screening assessment was conducted for the fisher scenario while a Tier 3 screening assessment was conducted for POM for the gardener scenario. In the Tier 3 screening for the fisher scenario, lakes near the facilities were reviewed on aerial photographs to ensure they were accessible for fishing. Any lakes not accessible were removed from the assessment. After conducting the Tier 3 assessment, the screening values for mercury and cadmium remained at 60 and 2, respectively.

The Tier 3 gardener scenario was refined by identifying the location of the residence most impacted by POM emissions from the facility as opposed to the worst-case near-field location used in the Tier 2 assessment. Based on these Tier 3 refinements to the gardener scenario, the maximum Tier 3 cancer screening value for POM was 20.

An exceedance of a screening threshold emission rate in any of the tiers cannot be equated with a risk value or an HQ (or HI). Rather, it represents

[45] We note that chloroprene (and all other HAP) emissions from HON processes co-located at the neoprene production facility result in an MIR of 90-in-1 million.

[46] Note that while the multipathway risk screening results includes metals (*e.g.,* arsenic, cadmium, mercury, arsenic) and POMs, the EPA in most instances used a conservative approach and modeled whole facility emissions inventories for the SOCMI source category. This means that emissions from other source categories were included for this analysis, and we have no information suggesting that metals or POMs are emitted from HON processes. See Appendix 1 of the document titled *Residual Risk Assessment for the SOCMI Source Category in Support of the 2023 Risk and Technology Review Proposed Rule,* which is available in the docket for this rulemaking for more details about development of the risk modeling file.

a high-end estimate of what the risk or hazard may be. For example, a screening value of 2 for a non-carcinogen can be interpreted to mean that the Agency is confident that the HQ would be lower than 2. Similarly, a Tier 2 cancer screening value of 7 means that we are confident that the cancer risk is lower than 7-in-1 million. Our confidence comes from the conservative, or health-protective, assumptions encompassed in the screening tiers: the Agency chooses inputs from the upper end of the range of possible values for the influential parameters used in the screening tiers, and the Agency assumes that the exposed individual exhibits ingestion behavior that would lead to a high total exposure.

The EPA determined that it is not necessary to go beyond the Tier 3 lake analysis or conduct a site-specific assessment for cadmium, mercury, or POM. The EPA compared the Tier 2 screening results to site-specific risk estimates for five previously assessed source categories. These are the five source categories, assessed over the past 4 years, which had characteristics that make them most useful for interpreting the HON screening results. For these source categories, the EPA assessed fisher and/or gardener risks for arsenic, cadmium, and/or mercury by conducting site-specific assessments. The EPA used AERMOD for modeling air dispersion and Tier 2 screens that used multi-facility aggregation of chemical loading to lakes where appropriate. These assessments indicated that cancer and noncancer site-specific risk values were at least 50 times lower than the respective Tier 2 screening values for the assessed facilities, with the exception of noncancer risks for cadmium for the gardener scenario, where the reduction was at least 10 times (refer to EPA Docket ID: EPA–HQ–OAR–2017–0015 and EPA–HQ–OAR–2019–0373 for a copy of these reports).[47]

Based on our review of these analyses, if the Agency was to perform a site-specific assessment for the SOCMI Source Category, the Agency would expect similar magnitudes of decreases from the Tier 2 SVs. As such, given the conservative nature of the screens and the level of additional refinements that would go into a site-specific multipathway assessment, were one to be conducted, we are confident that the HQ for ingestion exposure, specifically cadmium and mercury through fish ingestion, is at or below 1. For POM, the maximum cancer risk under the rural gardener scenario would likely decrease to below 1-in-1 million. Further details on the Tier 3 screening assessment can be found in Appendix 10–11 of *Residual Risk Assessment for the SOCMI Source Category in Support of the 2023 Risk and Technology Review Proposed Rule.*

In evaluating the potential for multipathway risk from emissions of lead, we compared modeled annual lead concentrations to the primary NAAQS for lead (0.15 μg/m^3). The highest annual lead concentration of 0.004 μg/m^3 is well below the NAAQS for lead, indicating low potential for multipathway risk of concern due to lead emissions.

Detailed information about the assessment is provided in the document titled *Residual Risk Assessment for the SOCMI Source Category in Support of the 2023 Risk and Technology Review Proposed Rule,* which is available in the docket for this rulemaking.

b. Neoprene Production Source Category

As mentioned above, we did not identify reported PB–HAP emissions from the Neoprene Production source category, and we could not undertake the three-tier human health risk screening assessment that was conducted for the SOCMI source category. However, we note that we would expect dioxins likely to be formed by combustion controls used to control chlorinated chemicals such as chloroprene from this source category. As no facility exceeded a Tier 2 screening value for dioxins in the HON multipathway risk screening assessment, including 4 HON facilities with dioxin emission rates higher than the standard being proposed for dioxins for the Neoprene Production source category (and 1 HON facility with a dioxins emission rate approximately 20 times higher than the proposed Neoprene Production emission limit), we would expect multipathway risk from dioxins from the Neoprene Production source category to screen lower than they are for the SOCMI source category after compliance with the proposed dioxin limit occurs.

4. Environmental Risk Screening Results

a. SOCMI Source Category

As described in section III.A of this preamble, we conducted a screening assessment for adverse environmental effects for the SOCMI source category. The environmental screening assessment included the following HAP: arsenic, cadmium, dioxin, methyl mercury, divalent mercury, and POMs.[48]

In the Tier 1 screening analysis for PB–HAP (other than lead, which was evaluated differently), arsenic emissions had no exceedances for any ecological benchmark. The maximum Tier 1 screening value was 200 for methyl mercury emissions for the surface soil No Observed Adverse Effects Level (NOAEL) avian ground insectivores benchmark. The other pollutants (cadmium, dioxins, POMs, divalent mercury, methyl mercury) had Tier 1 screening values above various benchmarks. Therefore, a Tier 2 screening assessment was performed for cadmium, dioxins, POMs, divalent mercury, and methyl mercury emissions.

In the Tier 2 screen, cadmium, dioxins, and POM emissions did not exceed any ecological benchmark. The following Tier 2 screening values were exceeded for methyl mercury emissions: a screening value of 5 for the fish-eating birds NOAEL benchmark (specifically for the small duck called the merganser), a screening value of 2 for the maximum allowable toxicant level for the merganser, and a screening value of 3 for avian ground insectivores (woodcock). The following Tier 2 screening values were exceeded for divalent mercury emissions: a screening value of 4 for a sediment threshold level and a screening value of 2 for an invertebrate threshold level. All of the Tier 2 exceedances for the merganser and sediment benchmarks are the result of emissions from 3 facilities acting on the same lake. The invertebrate and

[47] EPA Docket records (EPA–HQ–OAR–2017–0015): *Appendix 11 of the Residual Risk Assessment for the Taconite Manufacturing Source Category in Support of the Risk and Technology Review 2019 Proposed Rule; Appendix 11 of the Residual Risk Assessment for the Integrated Iron and Steel Source Category in Support of the Risk and Technology Review 2019 Proposed Rule; Appendix 11 of the Residual Risk Assessment for the Portland Cement Manufacturing Source Category in Support of the 2018 Risk and Technology Review Final Rule; Appendix 11 of the Residual Risk Assessment for the Coal and Oil-Fired EGU Source Category in Support of the 2018 Risk and Technology Review Proposed Rule;* and EPA Docket: (EPA–HQ–OAR–2019–0373): *Appendix 11* of the *Residual Risk Assessment for Iron and Steel Foundries Source Category in Support of the 2019 Risk and Technology Review Proposed Rule.*

[48] Note that while the environmental risk screening results includes metals (*e.g.,* arsenic, cadmium, mercury, arsenic) and POMs, the EPA in most instances used a conservative approach and modeled whole facility emissions inventories for the SOCMI source category. This means that emissions from other source categories were included for this analysis, and we have no information suggesting that metals or POMs are emitted from HON processes. See Appendix 1 of the document titled *Residual Risk Assessment for the SOCMI Source Category in Support of the 2023 Risk and Technology Review Proposed Rule,* which is available in the docket for this rulemaking for more details about development of the risk modeling file.

insectivore soil benchmarks are the result of emissions from 1 facility.

Since there were Tier 2 exceedances, we conducted a Tier 3 environmental risk screen. In the Tier 3 environmental risk screen, we looked at aerial photos of the lake being impacted by mercury emissions from the three HON-subject facilities. The aerial photos show that the ''lake'' is located in an industrialized area, has been channelized, and largely filled/drained. Therefore, it was determined that this ''lake'' would not support a fish population. We also looked at aerial photos of the facility that was driving the invertebrate and insectivore Tier 2 soil exceedances due to mercury emissions. The aerial photos show that the facility is located in a heavily industrialized area with the nearest ''natural areas'' being located more than 1500 meters from the facility. We re-calculated the soil screening values with the industrial areas removed and calculated a maximum Tier 3 soil screen value for mercury of 1.

We did not estimate any exceedances of the secondary lead NAAQS. The highest annual lead concentration of 0.004 $\mu g/m^3$ is well below the NAAQS for lead, indicating low potential for environmental risk of concern due to lead emissions.

We also conducted an environmental risk screening assessment specifically for acid gases (*i.e.,* HCl and HF) for the SOCMI source category. For HCl and HF, the average modeled concentration around each facility (*i.e.,* the average concentration of all off-site data points in the modeling domain) did not exceed any ecological benchmark. In addition, each individual modeled concentration of HCl and HF (*i.e.,* each off-site data point in the modeling domain) was below the ecological benchmarks for all facilities.

Based on the results of the environmental risk screening analysis, we do not expect an adverse environmental effect as a result of HAP emissions from this source category. Detailed information about the assessment is provided in the document titled *Residual Risk Assessment for the SOCMI Source Category in Support of the 2023 Risk and Technology Review Proposed Rule,* which is available in the docket for this rulemaking.

b. Neoprene Production Source Category

As mentioned above, because we did not identify reported PB–HAP emissions, we did not undertake the environmental risk screening assessment of PB–HAP for the Neoprene Production source category. However, we note that no facility exceeded a Tier 2 screening value for dioxins in the HON environmental risk screening assessment, including 4 HON facilities with dioxin emission rates higher than those being proposed for the Neoprene Production source category and 1 HON facility with a dioxin emission rate approximately 20 times higher than the proposed emission limits for the Neoprene Production source category.

Furthermore, we conducted an environmental risk screening assessment for acid gases (*i.e.,* HCl and HF) for the Neoprene Production source category; however, there were no reported emissions of HF at this facility. For HCl, the average modeled concentration around the facility (*i.e.,* the average concentration of all off-site data points in the modeling domain) did not exceed any ecological benchmark. In addition, each individual modeled concentration of HCl (*i.e.,* each off-site data point in the modeling domain) was below the ecological benchmarks for the facility. Detailed information about the assessment is provided in the document titled *Residual Risk Assessment for the Polymers & Resins I Neoprene Production Source Category in Support of the 2023 Risk and Technology Review Proposed Rule,* which is available in the docket for this rulemaking.

5. Facility-Wide Risk Results

a. HON Facilities

We conducted an assessment of facility-wide (or ''whole facility'') risk as described above to characterize the source category risk in the context of whole facility risk. We estimated whole facility risks using the NEI-based data described in section III.C of this preamble. The maximum lifetime individual cancer risk posed by the 195 modeled facilities (there are 207 HON facilities; however, only 195 of these facilities are included in the risk assessment based on available data, which corresponds to 222 EIS facility IDs) based on whole facility emissions is 2,000-in-1 million with EtO emissions from PRDs (74 percent) and equipment leaks (20 percent) from SOCMI source category emissions driving the risk. The total estimated cancer incidence based on facility-wide emission levels is 2 excess cancer cases per year. EtO emissions contribute 81 percent and chloroprene emissions contribute 3 percent of the total cancer incidence. Within 50 km (~31 miles) of HON-subject facilities, the population exposed to cancer risk greater than 100-in-1 million for HON facility-wide emissions is approximately 95,000 people, and the population exposed to cancer risk greater than or equal to 1-in-1 million is approximately 8.9 million people. The maximum chronic noncancer TOSHI posed by whole facility emissions is estimated to be 4 (for respiratory effects) due mostly (98 percent) to emissions from 2 facilities. Emissions from one facility contribute to 83 percent of the TOSHI, with approximately 60 percent of the total TOSHI from non-source category emissions of chlorine and another 15 percent from source category emissions of chlorine. Emissions from the second facility contribute to 15 percent of the TOSHI, with approximately 11 percent of the total TOSHI from source category emissions of acrylic acid and 2 percent from source category emissions of acrylonitrile. Approximately 1,100 people are estimated to be exposed to a TOSHI greater than 1 due to whole facility emissions.

b. Neoprene Production Facility

We also performed a facility-wide assessment for the facility in the Neoprene Production source category to characterize the source category risk in the context of whole facility risk. Note that this facility was also included the HON facility-wide risk assessment because it has HON sources as well as neoprene production sources (see section III.A.5.a of this preamble). The maximum lifetime individual cancer risk posed by the one neoprene production facility based on whole facility emissions is 600-in-1 million driven by chloroprene emissions from maintenance vents (66 percent total, 55 percent from neoprene production sources and 11 percent from HON sources), storage vessels (9 percent total, all from neoprene production sources), equipment leaks (7 percent total, 3 percent from neoprene production sources and 4 percent from HON sources), and wastewater (7 percent, all from neoprene production sources). The total estimated cancer incidence based on facility-wide emission levels is 0.06 excess cancer cases per year, or 1 case approximately every 17 years. Within 50 km (~31 miles) of the Neoprene Production facility, the population exposed to cancer risk greater than 100-in-1 million for facility-wide emissions is approximately 2,300 people, and the population exposed to cancer risk greater than or equal to 1-in-1 million is approximately 890,000 people. The maximum chronic noncancer TOSHI posed by whole facility emissions is estimated to be 0.3 (for respiratory effects) due to chlorine emissions.

6. Community-Based Risk Assessment

We also conducted a community-based risk assessment for HON-subject

facilities (which includes the one neoprene production facility). The goal of this assessment is to estimate cancer risk from HAP emitted from all local stationary point sources for which we have emissions data. We estimated the overall inhalation cancer risk due to emissions from all stationary point sources impacting census blocks within 10 km (~6.2 miles) of the 195 HON facilities. Specifically, we combined the modeled impacts from category and non-category HAP sources at HON facilities, as well as other stationary point source HAP emissions. Within 10 km of HON-subject facilities, we identified 2,700 non-source category facilities that could potentially also contribute to HAP inhalation exposures.

We first looked at what the maximum risk is for communities around SOCMI facilities. The results indicate that the community-level maximum individual cancer risk is the same as in the source category MIR and maximum risk for the facility-wide assessment, 2,000-in-1 million. The assessment estimated that essentially all (greater than 99.9 percent) of the MIR is attributable to emissions from the SOCMI source category. We then looked at what the communities' risks are from all emissions sources for which we had data. Within 10 km, the population exposed to cancer risks greater than 100-in-1 million from all nearby emissions is approximately 104,000. For comparison, approximately 87,000 people have cancer risks greater than 100-in-1 million due to HON emissions and approximately 95,000 people have cancer risks greater than 100-in-1 million due to HON facility-wide emissions (see Table 3 of this preamble). The overall cancer incidence for this exposed population (*i.e.,* populations with risks greater than 100-in-1 million living within 10 km of HON facilities) is 0.5, with 91 percent of the cancer incidence from HON processes, 7 percent from non-HON processes at HON facilities (a total of 98 percent from HON facilities), and 2 percent from other nearby stationary point sources that are not HON facilities.

The population exposed to cancer risks greater than or equal to 1-in-1 million in the community-based assessment is approximately 5.8 million people. For comparison, approximately 2.8 million people have cancer risks greater than or equal to 1-in-1 million due to HON process emissions and approximately 3.2 million people have cancer risks greater than 1-in-1 million due to HON facility-wide emissions (see Table 3 of this preamble). The overall cancer incidence for this exposed population (*i.e.,* people with risks greater than or equal to 1-in-1 million and living within 10 km of HON facilities) is 2, with 69 percent of the incidence due to emissions from HON processes, 16 percent from emissions of non-HON processes at HON facilities (that is, a total of 85 percent from emissions from HON facilities) and 15 percent from emissions from other nearby stationary sources that are not HON facilities.

After the controls proposed in this action are implemented for both the SOCMI and Neoprene Production source categories (see section III.B.2), the community-level maximum individual cancer risk will be reduced to the same as the facility-wide assessment, 1,000-in-1 million, from non-HON processes emitting ethylene oxide at a single facility. The assessment estimated that 98 percent of the MIR is attributable to emissions from non-HON processes at a HON facility. The population (within 10 km of HON facilities) exposed to cancer risks greater than 100-in-1 million from all nearby emissions will be significantly reduced from 104,000 people to 4,200 people; a 96 percent reduction from the baseline. The populations exposed to cancer risks greater than 100-in-1 million from the SOCMI source category and facility-wide emissions are similarly reduced, from 87,000 people to 0 for source category emissions and from 95,000 to 2,500 for facility-wide emissions (see Table 3 of this preamble). Furthermore, the overall cancer incidence for this exposed population is expected to be reduced from 0.5 to 0.02. The percentage of the cancer incidence due to emissions of HON processes is reduced from 91 percent to 9 percent. The percentage of the cancer incidence due to emissions of non-HON processes at HON facilities and emissions from other nearby stationary sources proportionately shifts to 57 percent and 34 percent respectively. EtO emissions across these sources remain the largest source of incidence, accounting for 89 percent of the overall cancer incidence for this exposed population.

The post-control population exposed to cancer risks greater than or equal to 1-in-1 million, 5.8 million people, would remain approximately the same as the baseline. In comparison, after the controls proposed in this action, the number of people with risks greater than or equal to 1-in-1 million due to source category emissions would reduce from 2.8 million to 2.5 million and due to facility-wide emissions from 3.2 million to 3.1 million (see Table 3 of this preamble). The lack of change from the baseline is largely due to the impacts from non-HON processes at HON facilities and from other nearby stationary sources maintaining the risks greater than or equal to 1-in-1 million for the exposed population. However, the overall cancer incidence for this exposed population is expected to be reduced from 2 to 0.7. The percentage of the cancer incidence from HON processes is expected to decrease from 69 to 38 percent. The cancer incidence from non-HON processes at HON facilities and from other nearby stationary sources are expected to proportionately shift to 29 percent and 32 percent, respectively.

Overall, the proposed emission reductions in this rule provide a substantial reduction in risks to the communities living around HON facilities. The number of people at cancer risks greater than 100-in-1 million is reduced from 104,000 people to 4,200 people, a 96 percent reduction. EtO emissions are by far the largest source of remaining risk in the community-based risk assessment, accounting for 85 percent across all sources. Moving forward, the EPA expects to continue to address EtO emissions for other chemical sector source categories.

TABLE 3—INHALATION CANCER RISK ASSESSMENT RESULTS FOR COMMUNITIES LIVING WITHIN 10 KM OF HON FACILITIES

Risk assessment	Maximum individual cancer risk (-in-1 million)	Estimated population at increased risk of cancer	
		>100-in-1 million	≥1-in-1 million
Baseline (Pre-Control)			
SOCMI Source Category	2,000	87,000 (10 km)	2.8 million (10 km).
Facility-wide	2,000	95,000 (10 km)	3.2 million (10 km).
Community	2,000	104,000 (10 km)	5.8 million (10 km).

TABLE 3—INHALATION CANCER RISK ASSESSMENT RESULTS FOR COMMUNITIES LIVING WITHIN 10 KM OF HON FACILITIES—Continued

Risk assessment	Maximum individual cancer risk (-in-1 million)	Estimated population at increased risk of cancer	
		>100-in-1 million	≥1-in-1 million
After Implementation of Proposed Controls (Post-Control)			
SOCMI Source Category	100	0 (10 km)	2.5 million (10 km).
Facility-wide [1]	1,000	2,500 (10 km)	3.1 million (10 km).
Community	1,000	4,200 (10 km)	5.8 million (10 km).

[1] Facility-wide post-control risks include proposed controls for the SOCMI and Neoprene Production source categories.

B. What are our proposed decisions regarding risk acceptability, ample margin of safety, and adverse environmental effect?

1. Risk Acceptability Under the Current MACT Standards

As noted in section II.D of this preamble, we weigh a wide range of health risk measures and factors in our risk acceptability determination, including the cancer MIR, the number of persons in various cancer and noncancer risk ranges, cancer incidence, the maximum noncancer TOSHI, the maximum acute noncancer HQ, the extent of noncancer risks, the distribution of cancer and noncancer risks in the exposed population, and risk estimation uncertainties (54 FR 38044, September 14, 1989).

Under the current MACT standards for the SOCMI source category, the risk results indicate that the MIR is 2,000-in-1 million, driven by emissions of EtO, and well above 100-in-1 million, which is the presumptive limit of acceptability. The estimated incidence of cancer due to inhalation exposures is 2 excess cancer case per year. The population estimated to be exposed to cancer risks greater than 100-in-1 million is approximately 87,000, and the population estimated to be exposed to cancer risks greater than or equal to 1-in-1 million is approximately 7.2 million. The estimated maximum chronic noncancer TOSHI from inhalation exposure for this source category is 2 for neurological effects. The acute risk screening assessment of reasonable worst-case inhalation impacts indicates a maximum acute HQ of 3.

Under the current MACT standards for the Neoprene Production source category, the risk results indicate that the MIR is 500-in-1 million, driven by emissions of chloroprene, and is above 100-in-1 million, the presumptive limit of acceptability. The estimated incidence of cancer due to inhalation exposures is 0.05 excess cancer case per year. The population estimated to be exposed to cancer risks greater than 100-in-1 million is approximately 2,100, and the population estimated to be exposed to cancer risks greater than or equal to 1-in-1 million is approximately 690,000 million. The estimated maximum chronic noncancer TOSHI from inhalation exposure for this source category is 0.05 for neurological effects, indicating low likelihood of adverse noncancer effects from long-term inhalation exposures. The acute risk screening assessment of reasonable worst-case inhalation impacts indicates a maximum acute HQ of 0.3. Therefore, we conclude that adverse effects from acute exposure to emissions from this category are not anticipated.

Considering all of the health risk information and factors discussed above, particularly the high MIR for both the SOCMI and Neoprene Production source categories, the EPA proposes that the risks for both source categories are unacceptable. As noted in section II.A of this preamble, when risks are unacceptable, under the 1989 Benzene NESHAP approach and CAA section 112(f)(2)(A), the EPA must first determine the emissions standards necessary to reduce risk to an acceptable level, and then determine whether further HAP emissions reductions are necessary to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. Therefore, pursuant to CAA section 112(f)(2), we are proposing certain standards for emission sources of EtO in the HON and certain standards for emission sources of chloroprene from the Neoprene Production source category that are more protective than the current HON and P&R I MACT standards.

2. Proposed Controls To Address Unacceptable Risks

As previously discussed, we conducted risk assessments of the SOCMI and Neoprene Production source categories because the 2016 revisions to the EPA's IRIS inhalation URE for EtO and the 2010 development of the EPA's IRIS inhalation URE for chloroprene showed that both these pollutants are more toxic than previously known.

For the SOCMI source category, we identified EtO as the cancer risk driver from HON sources. We are aware of 15 HON facilities reporting more than 0.1 tpy of EtO emissions in their emissions inventories from HON processes and two other facilities that are new or under construction with HON processes that we expect will exceed this threshold (but for which we do not yet have emissions inventory information). Of these 17 facilities, 12 facilities produce and emit EtO, which is a process subject to the HON MACT standards. In addition, all 17 of these facilities have additional HON processes that use and emit EtO in the production of glycols, glycol ethers, or ethanolamines. From our residual risk assessment, eight facilities with emissions of EtO from various HON processes have cancer risks above 100-in-1 million, and many different emission sources drive risk at these facilities. Thus, in order to reduce emissions of EtO from HON processes, the EPA is proposing more stringent control requirements for process vents, storage vessels, equipment leaks, heat exchange systems, wastewater, maintenance vents, flares, and PRDs that emit or have the potential to emit EtO. As discussed later in this preamble, we are proposing that these requirements that will reduce risk to an acceptable level also provide an ample margin of safety to protect public health, and that no additional requirements are needed to prevent an adverse environmental effect.

For the Neoprene Production source category, we identified chloroprene as the HAP cancer risk driver from the only facility in the Neoprene Production source category. Thus, in order to reduce risk posed by emissions from

neoprene production processes to an acceptable level, the EPA is proposing more stringent control requirements for process vents, storage vessels, wastewater, maintenance vents, and PRDs that emit or have the potential to emit chloroprene. Also, as discussed later in this preamble, we are proposing that these requirements that will reduce risk to an acceptable level also provide an ample margin of safety to protect public health, and that no additional requirements are needed to prevent an adverse environmental effect.

We discuss the control options we evaluated for reducing EtO emissions from HON processes in section III.B.2.a of this preamble and discuss the control options we evaluated for reducing chloroprene emissions from P&R I processes producing neoprene in section III.B.2.b of this preamble.

a. EtO Controls for HON Processes

i. Process Vents and Storage Vessels

Emissions of EtO can occur from several types of gas streams associated with HON processes, such as distillation columns, evaporator vents, and vacuum operations, as well as during vapor displacements and heating losses. HON storage vessels are used to store liquid and gaseous feedstocks for use in a process, as well as to store liquid and gaseous products from a process. EtO is typically stored under pressure as a liquified gas, but may also be found in small amounts in atmospheric storage vessels storing liquid products that are formed with ethylene oxide as a reactant in their production. Typical emissions from atmospheric storage tanks occur from working and breathing losses while pressure vessels are considered closed systems and, if properly maintained and operated, should have virtually no emissions. In some instances, pressurized vessels also could use a blanket of inert gas, most often nitrogen, to maintain a non-decomposable vapor space, and continuous purge of vapor space from non-loading operations could also lead to emissions from storage vessels.

The current HON standards divide process vents into Group 1 process vents, which require control, and Group 2 process vents, which generally do not require controls provided they do not exceed Group 1 thresholds. All HON Group 1 and Group 2 process vents are continuous. The Group 1 and Group 2 designations for process vents are based on volumetric flow rate, total organic HAP concentration, and the TRE index value.[49] The current HON standard requires uncontrolled Group 1 process vents to reduce total organic HAP emissions by 98 percent by weight by venting emissions through a closed vent system to any combination of control devices or to vent emissions through a closed vent system to a flare. We provide more details about process vents in our technology review discussion (see section III.C.3 of this preamble).

Similarly, the current HON standards divide storage vessels into Group 1 storage vessels, which require control, and Group 2 storage vessels, which generally do not require controls provided they do not exceed Group 1 thresholds. The Group 1 and Group 2 designation for storage vessels is based on the volume of the storage vessel and MTVP of the material stored. Group 1 storage vessels are those with capacities between 75 m^3 and 151 m^3 and a MTVP greater than or equal to 13.1 kPa, and those with capacities greater than or equal to 151 m^3 and a MTVP greater than or equal to 5.2 kPa. The current HON standards require Group 1 storage vessels to reduce total HAP emissions by 95 percent (or 90 percent if the storage vessel was installed on or before December 31, 1992) by venting emissions through a closed vent system to any combination of control devices or to vent emissions through a closed vent system to a flare. Owners and operators of Group 1 storage vessels storing a liquid with a MTVP of total organic HAP less than 76.6 kPa are also allowed to reduce organic HAP by utilizing an IFR, an EFR, an EFR converted to an IFR, routing the emissions to a process or a fuel gas system, or vapor balancing. For Group 1 storage vessels storing a liquid with a MTVP of total organic HAP greater than or equal to 76.6 kPa, owners and operators can reduce organic HAP emissions by 95 percent by venting emissions through a closed vent system to any combination of control devices, control emissions by routing them to a process or a fuel gas system, or by using vapor balancing. Pressure vessels (operating in excess of 204.9 kPa without emissions to the atmosphere) may also store materials with EtO. For storage vessels, the HON allows use of a design evaluation instead of a performance test to determine the percent reduction of control devices for any quantity of total uncontrolled organic HAP emissions being sent to the control device. We provide more details about storage vessels in our technology review discussion (see section III.C.2 of this preamble)

Results of our risk assessment indicate that two HON facilities present cancer risks greater than 100-in-1 million just from EtO emissions from process vent sources. At one of the two facilities, EtO risk from process vent emission sources emitted through PRDs is approximately 75 percent of the facility's total SOCMI source category risk of 2000-in-1 million. At the other facility, EtO risk from process vent emission sources is approximately 20 percent of the facility's total SOCMI source category risk of 500-in-1 million. Additionally, EtO from storage vessels accounts for approximately 70-in-1 million of the source category MIR of 2,000-in-1 million risk. To understand how to best address risk within the SOCMI source category, we reviewed information from our CAA section 114 request for this rulemaking (see section II.C of this preamble) and identified six facilities that measured EtO emissions from 14 emission points associated with process vents and storage vessels. The information gathered for these emission points indicates that HON sources with EtO emissions from process vents and storage vessels typically use combustion devices (*e.g.,* thermal oxidizers) to control EtO emissions. Of these 14 emission points, seven are controlled by either a thermal incinerator, regenerative thermal oxidizer, vapor combustion unit, or catalytic oxidation unit; three are controlled by a scrubber; and the remaining four are uncontrolled. Based on results from the risk assessment, we determined that the current MACT standards for HON process vents and storage vessels do not result in sufficient reductions of EtO emissions to reduce risk to an acceptable level, and, therefore, we evaluated available control technologies with a higher level of control, as discussed below.

In the MON final RTR (see 85 FR 49084, August 12, 2020), the EPA evaluated options to control EtO emissions from process vents and storage tanks ''in ethylene oxide service'' [50] regardless of whether the emission source is classified as Group 1 or Group 2. To reduce EtO emissions from MON process vents and storage

[49] See section III.C.3.a of this preamble for a description of the TRE index value and how the concept is currently used in the HON.

[50] In the MON, a process vent in ethylene oxide service means each batch and continuous process vent in a process that, when uncontrolled, contains a concentration of greater than or equal to 1 ppmv undiluted ethylene oxide, and when combined, the sum of all these process vents would emit uncontrolled, ethylene oxide emissions greater than or equal to 5 lb/yr (2.27 kg/yr); a storage vessel in ethylene oxide service means a storage tank of any capacity and vapor pressure storing a liquid that is at least 0.1 percent by weight of ethylene oxide.

tanks in EtO service, the EPA finalized a requirement to either: (1) Vent emissions through a closed-vent system to a control device that reduces EtO by greater than or equal to 99.9 percent by weight or to a concentration less than 1 ppmv for each process vent and storage tank vent (or, for multiple process vents, to less than 5 lb/yr for all combined process vents); or (2) vent emissions through a closed-vent system to a flare meeting the flare operating requirements discussed in section III.D.1 of this preamble.

We are proposing the same ''in ethylene oxide service'' definitions as used in MON. For process vents, we are proposing to define ''in ethylene oxide service'' in the HON at 40 CFR 63.101 to mean each process vent in a process that, when uncontrolled, contains a concentration of greater than or equal to 1 ppmv undiluted EtO, and when combined, the sum of all these process vents would emit uncontrolled EtO emissions greater than or equal to 5 pounds per year (2.27 kilograms per year). For storage vessels of any capacity and vapor pressure, we are proposing to define ''in ethylene oxide service'' in the HON at 40 CFR 63.101 to mean that the concentration of EtO of the stored liquid is at least 0.1 percent by weight. Additionally, we are proposing that unless specified by the Administrator, owners and operators may calculate the concentration of EtO of the fluid stored in a storage vessel if information specific to the fluid stored is available such as concentration data from safety data sheets. We are also proposing that the exemption for ''vessels storing organic liquids that contain organic hazardous air pollutants only as impurities'' listed in the definition of ''storage vessel'' at 40 CFR 63.101 does not apply for storage vessels in EtO service.

We are proposing the same MON EtO-specific requirements [51] in the HON for HON process vents and storage vessels ''in ethylene oxide service,'' except that we are proposing to add a requirement that if a combustion device is used to comply with the concentration standard, then the concentration must be corrected to 3 percent oxygen to determine compliance.[52] Accordingly, to help reduce risk from the SOCMI source category to an acceptable level, we are proposing that HON process vents in EtO service either reduce emissions of EtO by: (1) Venting emissions through a closed vent system to a control device that reduces EtO by greater than or equal to 99.9 percent by weight, or to a concentration less than 1 ppmv for each process vent, or to less than 5 pounds per year for all combined process vents; or (2) venting emissions through a closed vent system to a flare meeting the proposed flare operating requirements discussed in section III.D.1 of this preamble (see proposed 40 CFR 63.113(j)). To help reduce risks from the SOCMI source category to an acceptable level, we are proposing that HON storage vessels in EtO service either reduce emissions of EtO by: (1) Venting emissions through a closed vent system to a control device that reduces EtO by greater than or equal to 99.9 percent by weight or to a concentration less than 1 ppmv for each storage tank vent; or (2) venting emissions through a closed-vent system to a flare meeting the proposed flare operating requirements discussed in section III.D.1 of this preamble (see proposed 40 CFR 63.119(a)(5)). Additionally, we propose removing the option to allow use of a design evaluation in lieu of performance testing to demonstrate compliance for storage vessels in EtO service to ensure that the required level of control is achieved (see proposed 40 CFR 63.124(a)(1)(i) and (b)(3)). We are also proposing that after promulgation of the rule, owners or operators that choose to control emissions with a non-flare control device conduct an initial performance test according to proposed 40 CFR 63.124 on each existing control device in EtO service and on each newly installed control device in EtO service to verify performance at the required level of control. Additionally, we are proposing at 40 CFR 63.124(b) that owners or operators conduct periodic performance testing on non-flare control devices in EtO service every 5 years. Additional information on these evaluated control options to reduce EtO risk from HON process vents and storage vessels is found in the document titled *Analysis of Control Options for Process Vents and Storage Vessels to Reduce Residual Risk of Ethylene Oxide in the SOCMI Source Category for Processes Subject to HON,* which is available in the docket for this action.

ii. Equipment Leaks

Emissions of EtO from equipment leaks occur in the form of gases or liquids that escape to the atmosphere through connection points (*e.g.,* threaded fittings) or through the moving parts of valves, pumps, compressors, PRDs, and certain types of process equipment. The applicable equipment is those components, including pumps, compressors, agitators, PRDs, sampling collection systems, OEL, valves, and connectors that contain or contact material that is 5 percent by weight or more of organic HAP, operate 300 hours per year or more, and are not in vacuum service. The equipment leak HON requirements vary by equipment (component) type but require LDAR using monitoring with EPA Method 21 of appendix A–7 to 40 CFR part 60 at certain frequencies (*e.g.,* monthly, quarterly, every 2 quarters, annually) and have varying leak definitions (*e.g.,* 500 ppm, 1,000 ppm, 10,000 ppm) depending on the type of service (*e.g.,* gas and vapor service or in light liquid service). The LDAR requirements for components in heavy liquid service include sensory monitoring and the use of EPA Method 21 monitoring if a leak is identified. We provide more details about equipment leaks in our technology review discussion (see section III.C.6 of this preamble).

Results from our risk assessment indicate that, for the source category MIR of 2,000-in-1 million, approximately 20 percent is from emissions of EtO related to HON equipment leaks. We also note that the risk from EtO from HON equipment leaks at seven facilities (including the facility driving the MIR) is ≥100-in-1 million. To help reduce the risk from the SOCMI source category to an acceptable level, for EtO emissions from HON equipment leaks, we performed a review of available measures for reducing EtO emissions from components that are most likely to be in EtO service, which include connectors (in gas and vapor service or light liquid service), pumps (in light liquid service), and valves (in gas or light liquid service). Almost all equipment leak emissions of EtO come from these three pieces of equipment. We identified options to further strengthen LDAR practices for these three pieces of equipment, including by lowering the leak definitions and/or requiring more frequent monitoring with EPA Method 21 of 40 CFR part 60, appendix A–7, to find more equipment leaks faster and fix them.

For gas/vapor and light liquid connectors in EtO service, we identified three options: (1) Require connector monitoring at a leak definition of 500 ppm with annual monitoring and no reduction in monitoring frequency (*i.e.,* no skip periods), (2) require connector monitoring at a leak definition of 100 ppm with annual monitoring and no reduction in monitoring frequency, and

[51] See 40 CFR 63.2493.

[52] We are proposing the concentration correction requirement because, unlike MON sources with ethylene oxide which were using scrubber controls, HON sources are generally using combustion controls for ethylene oxide and a concentration correction for combustion controls assures dilution with air is not an additional strategy that facilities could use to bypass control requirements.

(3) require connector monitoring at a leak definition of 100 ppm with monthly monitoring and no reduction in monitoring frequency.

For light liquid pumps in EtO service, we identified three options: (1) Lower the leak definition from 1,000 ppm to 500 ppm with monthly monitoring, (2) lower the leak definition from 1,000 ppm to 100 ppm with monthly monitoring, or (3) require the use of leakless pumps (*i.e.,* canned pumps, magnetic drive pumps, diaphragm pumps, pumps with tandem mechanical seals, pumps with double mechanical seals) with annual monitoring with a leak definition of any reading above background concentration levels.

For gas/vapor and light liquid valves in EtO service, we identified two options: (1) Require a leak definition of 500 ppm with monthly monitoring and no reduction in monitoring frequency, or (2) lower the leak definition from 500 ppm to 100 ppm with monthly monitoring and no reduction in monitoring frequency.

Due to the high residual risk for some of the facilities from equipment leaks of EtO and the potential need for greater emission reduction to meet an acceptable level of risk for the SOCMI source category, we also evaluated a more stringent option that combines several of the component options. We evaluated the combined option of requiring monthly monitoring for valves (in gas/vapor and light liquid service), connectors (in gas/vapor and light liquid service), and pumps (light liquid service) in EtO service at a leak definition of 100 ppm for valves and connectors and 500 ppm for pumps using EPA Method 21 of 40 CFR part 60, appendix A–7. This combined option also does not allow equipment in EtO service to be monitored less frequently with skip periods nor allow facilities to take advantage of the delay of repair provisions. Increasing the monitoring frequency to monthly was analyzed for connectors because they are the most numerous equipment components at chemical facilities, and they contribute the most to the baseline emissions from leaking equipment at the EtO emitting facilities.

For the component specific control options, we calculated the EtO baseline emissions and emissions after implementation of controls for each facility using average VOC emission rates for each component, and the component counts and the EtO weight percent of the process from the responses to the EPA's CAA section 114 request. For the combined option of monthly monitoring of gas and light liquid valves and connectors at 100 ppm and light liquid pumps at 500 ppm, we do not have emission factors to estimate reductions for increased monitoring frequencies for connectors. Where no simplified emission factor method exists to determine potential reductions of applying the option, we estimated emissions reductions based on the approach used in other rules,[53] where detailed leak data was available or where a leak distribution could be assumed. The equipment leaks model uses a Monte Carlo analysis to estimate emissions from EtO facility equipment leaks. A detailed discussion of the model is found in the memorandum *Analysis of Control Options for Equipment Leaks to Reduce Residual Risk of Ethylene Oxide in the SOCMI Source Category for Processes Subject to HON,* which is available in the docket for this action.

We are proposing the same ''in ethylene oxide service'' definition for equipment as used in MON.[54] For equipment leaks, we are proposing to define ''in ethylene oxide service'' in the HON at 40 CFR 63.101 to mean any equipment that contains or contacts a fluid (liquid or gas) that is at least 0.1 percent by weight of EtO. For HON equipment in EtO service, in order to achieve greater emissions reductions to help meet an acceptable level of risk for the SOCMI source category, we are proposing the following combined requirements: monitoring of connectors in gas/vapor and light liquid service at a leak definition of 100 ppm on a monthly basis with no reduction in monitoring frequency or delay of repair (see proposed 40 CFR 63.174(a)(3) and 40 CFR 63.174(b)(3)(vi)); light liquid pump monitoring at a leak definition of 500 ppm monthly (see proposed 40 CFR 63.163(b)(2)(iv)); and gas/vapor and light liquid valve monitoring at a leak definition of 100 ppm monthly with no reduction in monitoring frequency or delay of repair (see proposed 40 CFR 63.168(b)(2)(iv) and 40 CFR 63.168(d)(5)). Additional information on all evaluated control options to reduce EtO risk from HON equipment leaks is found in the document titled *Analysis of Control Options for Equipment Leaks to Reduce Residual Risk of Ethylene Oxide in the SOCMI Source Category for Processes Subject to HON,* which is available in the docket for this action.

iii. Heat Exchange Systems

Emissions of EtO from heat exchange systems occur when a heat exchanger's internal tubing material corrodes or cracks, allowing some process fluids to mix or become entrained with the cooling water. Pollutants (*e.g.,* EtO) in the process fluids may subsequently be released from the cooling water into the atmosphere when the water is exposed to air (*e.g.,* in a cooling tower for closed-loop systems or trenches/ponds in a once-through system). Heat exchange systems subject to the HON are required to monitor for leaks of process fluids into cooling water and take actions to repair leaks within 45 days if they are detected (and facilities may delay the repair of leaks if they meet certain criteria). The current HON MACT standard for heat exchange systems allows the use of any method listed in 40 CFR part 136 to be used to sample cooling water for leaks for the HAP listed in Table 4 to subpart F (recirculating systems) and Table 9 to subpart G (once-through systems) (and other representative substances such as TOC or VOC that can indicate the presence of a leak can also be used). In addition, the HON allows facilities to monitor for leaks using a surrogate indicator of leaks (*e.g.,* ion specific electrode monitoring, pH, conductivity), provided that certain criteria in 40 CFR 63.104(c) are met. We provide more details about heat exchange systems in our technology review discussion (see section III.C.1 of this preamble).

Results from our risk assessment indicate that EtO leaks from heat exchange systems result in risks of 400-in-1 million at one facility and 90-in-1 million at another. The HON heat exchange system technology review (see section III.C.1 of this preamble) identified use of the Modified El Paso Method as a development in practice for heat exchange systems at HON-subject facilities. Specifically, we identified the following control option for heat exchange systems: quarterly monitoring with the Modified El Paso Method, using a leak action level defined as a total strippable hydrocarbon concentration (as methane) in the stripping gas of 6.2 ppmv (and not allowing delay of repair of leaks for more than 30 days where a total strippable hydrocarbon concentration (as methane) in the stripping gas of 62 ppmv or higher is found). This option would also require follow-up monitoring at the same monitoring location where the leak was identified to ensure that any leaks found were fixed. For heat exchange systems, we are proposing to define ''in ethylene oxide

[53] Gas Plant Equipment Leak Monte Carlo Model Code and Instructions. October 21, 2021. EPA Docket No. EPA–HQ–OAR–2021–0317. Control Options for Equipment Leaks at Gasoline Distribution Facilities. October 20, 2021. EPA Docket No. EPA–HQ–OAR–2020–0371.

[54] See 40 CFR 63.2550.

service'' in the HON at 40 CFR 63.101 to mean each heat exchange system in a process that cools process fluids (liquid or gas) that are 0.1 percent or greater by weight of EtO. To address the risk from EtO emissions due to HON heat exchange system leaks, we evaluated the following option for HON heat exchange systems ''in ethylene oxide service'': (A) require use of the Modified El Paso Method (see section III.C.1 of this preamble), (B) increase the Modified El Paso Method monitoring frequency from quarterly to weekly, (C) reduce the allowed amount of repair time from 45 days after finding a leak to 15 days from the sampling date, and (D) prohibit delay of repair. We anticipate this option would reduce EtO emissions from leaking heat exchange systems by 93 percent because leaks would be identified and repaired quicker, and this is needed to help reduce risk from the SOCMI source category. For this reason, we are proposing to require weekly monitoring for leaks for heat exchange systems in EtO service using the Modified El Paso Method (see proposed 40 CFR 63.104(g)(6)), and if a leak is found, we are proposing owners and operators must repair the leak to reduce the concentration or mass emissions rate to below the applicable leak action level as soon as practicable, but no later than 15 days after the sample was collected with no delay of repair allowed (see proposed 40 CFR 63.104(h)(6)). Additional information on this evaluated control option to reduce EtO risk from HON heat exchange systems is found in the document titled *Analysis of Control Options for Heat Exchange Systems to Reduce Residual Risk of Ethylene Oxide in the SOCMI Source Category for Processes Subject to HON,* which is available in the docket for this action.

iv. Wastewater

EtO is emitted into the air from wastewater collection, storage, and treatment systems that are uncovered or open to the atmosphere through volatilization of the compound at the liquid surface. Emissions occur by diffusive or convective means, or both. Diffusion occurs when organic pollutant concentrations at the water surface are much higher than ambient concentrations. The organic pollutants volatilize, or diffuse into the air, to reach equilibrium between the aqueous and vapor phases. Convection occurs when air flows over the water surface, sweeping organic vapors from the water surface into the air. The rate of volatilization is related directly to the speed of the air flow over the water surface.

The current HON standards divide wastewater streams into Group 1 wastewater streams, which require controls, and Group 2 wastewater streams, which generally do not require controls provided they do not exceed Group 1 thresholds. The Group 1 and Group 2 designations for wastewater streams are based on volumetric flow rate and total annual average organic HAP concentration. The HON specifies performance standards for treating Group 1 wastewater streams using open or closed biological treatment systems or using a design steam stripper with vent control. For APCDs (*e.g.,* thermal oxidizers) used to control emissions from collection system components, steam strippers, or closed biological treatment, the HON provides owners or operators several compliance options, including 95 percent destruction efficiency, a 20 ppmv outlet concentration, or design specifications for temperature and residence time. We provide more details about wastewater streams in our technology review discussion (see section III.C.5 of this preamble).

Results from our risk assessment indicate that EtO emissions from wastewater result in risks of 200-in-1 million at one facility and 70-in-1 million at another. For wastewater, we are proposing to define ''in ethylene oxide service'' in the HON at 40 CFR 63.101 to mean each wastewater stream that contains total annual average concentration of EtO greater than or equal to 1 part per million by weight at any flow rate. To help reduce the risk from EtO emissions to an acceptable level, we are proposing that owners and operators of HON sources manage and treat any wastewater streams that are ''in ethylene oxide service'' (see proposed 40 CFR 63.132(c)(1)(iii) and (d)(1)(ii)) as they would a Group 1 wastewater stream. Additional information on this evaluated control option to reduce EtO risk from HON wastewater streams is found in the document titled *Analysis of Control Options for Wastewater Streams to Reduce Residual Risk of Ethylene Oxide in the SOCMI Source Category for Processes Subject to HON,* which is available in the docket for this action.

Finally, we are aware of at least two HON-subject facilities that reported EtO emissions from heat exchange systems due to disposing EtO entrained water (*e.g.,* condensate water, quench and glycol bleeds) into their cooling water. While these are not ''leaks'' from heat exchange systems, this water is being combined with water in heat exchange systems that should actually be considered a potential source of wastewater, as it contains EtO. One of these facilities reported approximately 2.5 tpy EtO were released to the atmosphere in 2017 from this activity; the other facility reported about 0.5 tpy EtO emissions (for 2017) from a similar activity. In order to help reduce risk from the SOCMI source category to an acceptable level, and in an effort to eliminate these types of EtO emissions from wastewater being injected into heat exchange systems, we are also proposing to prohibit owners and operators from injecting water into or disposing of water through any heat exchange system in a CMPU meeting the conditions of 40 CFR 63.100(b)(1) through (3) if the water contains any amount of EtO, has been in contact with any process stream containing EtO, or the water is considered wastewater as defined in 40 CFR 63.101 (see proposed 40 CFR 63.104(k)).

v. Maintenance Vents

We are proposing the new term ''maintenance vent'' for process vents that are only used as a result of startup, shutdown, maintenance, or inspection of equipment where equipment is emptied, depressurized, degassed, or placed into service. We provide more details about maintenance vents in section III.D.4 of this preamble. We identified three HON-subject facilities that reported EtO emissions from maintenance vents in their 2017 NEI from HON processes that use and emit EtO. We determined that, in order to help reduce EtO risk from the SOCMI source category to an acceptable level, facilities would need to limit their amount of EtO being emitted through maintenance vents (*i.e.,* equipment openings). For this reason, we are proposing a requirement that owners and operators cannot release more than 1.0 ton of EtO from all maintenance vents combined in any consecutive 12-month period (see proposed 40 CFR 63.113(k)(4)). We based this proposed limit on the largest amount of EtO emissions reported in the 2017 NEI for all maintenance vents combined at any single HON-subject facility (*i.e.,* one facility reported about 1 ton of EtO from maintenance activities which corresponded to 80-in-1 million risk). Facilities could use a portable thermal oxidizer to control excess EtO emissions from their maintenance vents in order to meet the proposed 1.0 tpy EtO maintenance vent limit;[55] however,

[55] We surmised that a portable thermal oxidizer is a reasonable control option for maintenance vents because it would require a significant effort to identify and characterize each potential release point to install permanent APCDs.

based on the 2017 NEI, we anticipate that all HON-subject facilities with processes that use and emit EtO can already meet this proposed emissions limit without additional control.

vi. Flares

We determined that to achieve an acceptable level of risk, facilities need to limit the amount of ethylene oxide they are emitting from flaring from all HON emission sources at their facility, even after applying the control options for the other HON emission sources that we evaluated to reduce risk to an acceptable level. This determination is supported by the fact that there is one facility with a risk of 500-in-1 million from flaring EtO and another facility with risk of 90-in-1 million as a result of this same operation. Therefore, we are proposing a requirement that owners and operators can send no more than 20 tons of EtO to all of their flares combined in any consecutive 12-month period from all HON emission sources at a facility (see proposed 40 CFR 63.108(p)).

We identified nine HON-subject facilities that reported the use of flares in their 2017 NEI to control EtO emissions from HON processes that use and emit EtO. Two of these facilities each reported about two times more EtO emissions from their flares than the reported EtO emissions from all the other seven HON-subject facilities combined. Based on this reported emissions data, the highest risk source for flaring emitted a combined total of 2.87 tpy of EtO from its flares. In order to reduce the HON risk to an acceptable level, the EtO emissions from all flares would need to be less than or equal to 0.40 tpy (in addition to complying with other standards designed to reduce risk to an acceptable level). Assuming 98 percent flare control efficiency and back-calculating an EtO waste gas flare load, the maximum inlet load to all flares combined would need to be 20 tpy. Using the reported EtO emissions of 2.87 tpy from the highest emitting facility, we estimate that the facility's current combined total EtO load to flares is about 143.5 tpy, and that the facility would need to reduce the combined total EtO load to their flares by about 124 tpy to meet the EtO load limit of 20 tpy. For these reasons, we are proposing a requirement that owners and operators can send no more than 20 tons of EtO to all of their flares combined in any consecutive 12-month period (see proposed 40 CFR 63.108(p)) to get to an acceptable level of risk from all HON emission sources at a facility. A more thorough discussion of this analysis is included in the document titled *Analysis of Control Options for Flares to Reduce Residual Risk of Ethylene Oxide in the SOCMI Source Category for Processes Subject to HON,* which is available in the docket for this action.

vii. PRDs

The HON currently regulates PRDs through equipment leak provisions that are applied only after the pressure release event relief occurs (*i.e.,* conduct monitoring with EPA Method 21 of Appendix A–7 to 40 CFR part 60 after each pressure release using a leak definition of 500 ppm) to ensure they are properly reseated and not leaking after a PRD release occurs; however, these provisions do not apply to an emissions release from a PRD (see section III.D.2 of this preamble for more detail). As previously discussed in section III.B.2.a.i of this preamble, we are aware of some instances where PRD releases of EtO emissions occurred for gas streams that would otherwise be treated as process vents. These PRD releases contribute to a large portion of the 2000-in-1 million MIR (*i.e.,* 75 percent) that we are proposing is unacceptable. While the EPA is proposing to set work practice standards for PRD releases (see section III.D.2 of the preamble), in order to help reduce risk from the SOCMI source category to an acceptable level we are also proposing at 40 CFR 63.165(e)(3)(v)(D) that any release event from a PRD in EtO service is a violation of the standard to ensure that these process vent emissions are controlled and do not bypass controls.

viii. Summary

For process vents, storage vessels, equipment leaks, heat exchange systems, wastewater, maintenance vents, flares, and PRDs, we considered the control options described above for reducing EtO risk from the SOCMI source category that are associated with processes subject to the HON. To reduce risk from the source category to an acceptable level, we propose to require control of EtO emissions from: (1) Process vents, (2) storage vessels, (3) equipment leaks, (4) heat exchange systems, and (5) wastewater ''in ethylene oxide service'' (defined in this proposal). We are also proposing requirements to reduce EtO emissions from maintenance vents, flares, and PRDs. For process vents and storage vessels in EtO service, we are proposing owners and operators reduce emissions of EtO by either: (1) Venting emissions through a closed-vent system to a control device that reduces EtO by greater than or equal to 99.9 percent by weight, to a concentration less than 1 ppmv for each process vent and storage vessel, or to less than 5 lb/yr for all combined process vents; or (2) venting emissions through a closed-vent system to a flare meeting the proposed operating and monitoring requirements for flares in NESHAP subpart F. For equipment leaks in EtO service, we are proposing the following combined requirements: monitoring of connectors in gas/vapor and light liquid service at a leak definition of 100 ppm on a monthly basis with no reduction in monitoring frequency and no delay of repair; light liquid pump monitoring at a leak definition of 500 ppm monthly; and gas/vapor and light liquid valve monitoring at a leak definition of 100 ppm monthly with no reduction in monitoring frequency and no delay of repair. For heat exchange systems in EtO service, we are proposing to require owners or operators to conduct more frequent leak monitoring (weekly instead of quarterly) and repair leaks within 15 days from the sampling date (in lieu of the current 45-day repair requirement after receiving results of monitoring indicating a leak), and delay of repair would not be allowed. For wastewater in EtO service, we are proposing to revise the Group 1 wastewater stream threshold for sources to include wastewater streams in EtO service. For maintenance vents, we are proposing a requirement that owners and operators cannot release more than 1.0 ton of EtO from all maintenance vents combined in any consecutive 12-month period. For flares, we are proposing a requirement that owners and operators can send no more than 20 tons of EtO to all of their flares combined from all HON emission sources at a facility in any consecutive 12-month period. For PRDs in EtO service, we are proposing that any atmospheric PRD release is a violation of the standard.

In all cases, we are proposing that if information exists that suggests EtO could be present in these processes, then the emission source is considered to be in EtO service unless sampling and analysis is performed to demonstrate that the emission source does not meet the definition of being in EtO service. We are proposing sampling and analysis procedures at 40 CFR 63.109. Examples of information that could suggest EtO is present in a process stream include calculations based on safety data sheets, material balances, process stoichiometry, or previous test results provided the results are still relevant to the current operating conditions.

Based on the proposed applicability thresholds, we expect that up to 17 facilities will be affected by one or more

of the proposed EtO-specific standards; and we anticipate that all of these facilities will be subject to the process vent, storage vessel, equipment leak, wastewater, and PRD provisions. We do not expect any facility to be impacted by the proposed 1.0 tpy maintenance vent EtO emission limit, and only two facilities will be affected by the proposed 20 tpy EtO flare load limit, although all facilities will be required to comply with these standards.

b. Chloroprene Controls for P&R I Neoprene Production Processes

i. Process Vents and Storage Vessels

Results from our risk assessment indicate that for the Neoprene Production source category, 65 percent of the risk presented by neoprene production processes (*i.e.,* 300-in-1 million) and 12 of the 17.5 tpy of chloroprene in the reported emissions inventory are from emissions associated with reaction processes and supporting equipment, and storage vessels at the one neoprene production facility. Specifically, 58 percent of the risk is associated with emissions from the polymer building wall fans housing much of the operations for creating neoprene, of which most of the emissions are from the opening of the polymer reactors and straining of coagulate generated after the batch polymerization occurs to make neoprene; 5 percent of the risk is from emissions from unstripped emulsion storage vessels as they are being opened and/or degassed; and 2 percent of the risk is from emissions from the wash belt dryers. An additional 18 percent of the risk is from wastewater sources, which are discussed in III.B.2.b.ii of this preamble.

For process vents, we are proposing to define ''in chloroprene service'' in P&R I at 40 CFR 63.482 to mean each continuous front-end process vent and each batch front-end process vent in a process at affected sources producing neoprene that, when uncontrolled, contains a concentration of greater than or equal to 1 ppmv undiluted chloroprene, and when combined, the sum of all these process vents would emit uncontrolled, chloroprene emissions greater than or equal to 5 lb/yr (2.27 kg/yr). For storage vessels, we are proposing to define ''in chloroprene service'' in P&R I at 40 CFR 63.482 to mean storage vessels of any capacity and vapor pressure in a process at affected sources producing neoprene storing a liquid that is at least 0.1 percent by weight of chloroprene, which would require control of the unstripped resin storage vessels and emissions from opening or degassing of these sources. Additionally, we are proposing that unless specified by the Administrator, owners and operators may calculate the concentration of chloroprene of the fluid stored in a storage vessel if information specific to the fluid stored is available such as concentration data from safety data sheets. We are proposing to require emissions from process vents and storage vessels in chloroprene service be routed to a closed vent system to a non-flare control device that reduces chloroprene by greater or equal to 99.9 percent by weight, or to a concentration less than 1 ppmv for each process vent or storage vessel vent, or less than 5 pounds per year for all combined process vents. (see proposed 40 CFR 63.484(u)(1), 40 CFR 63.485(y)(1), and 40 CFR 63.487(j)(1)). Our proposed approach would require control of process vent emissions from batch polymer reactors that the one neoprene facility has already voluntarily controlled (but that are not currently required to be controlled in P&R I) and that are considered in the baseline emissions of our risk assessment. These proposed standards would also capture emissions from the emulsion storage vessels, strainers, and wash belt dryers. We determined that the only viable way to meet these proposed standards is to enclose all of the polymer batch reactors, emulsion storage vessels, strainers, and wash belt dryers and route the vapors to a thermal oxidizer (and thereby reduce chloroprene emissions from these sources, which are fugitive in nature). We costed out permanent total enclosures, a thermal oxidizer, and ductwork and associated support equipment using the procedures in EPA's Control Cost Manual. Enclosing and routing vapors to a thermal oxidizer is expected to achieve at least 99.9 percent reduction in chloroprene emissions from the storage vessels and wash belt dryers. Due the openness of the polymer building and other emission sources that could contribute to emissions coming from the polymer building overall, we estimate that 90 percent of the chloroprene emissions will be collected in the enclosures and be reduced by at least 99.9 percent in the thermal oxidizer. The result of the control option is to reduce chloroprene emissions and risk from the polymer building, unstripped resin emulsion storage vessels, and the wash belt dryers from 12 tpy to 0.7 tpy. Because of concerns that some of these emission sources may not necessarily be considered process vents or emissions regulated for storage vessels (*e.g.,* since we are assuming permanent total enclosures will be needed to collect these emissions since they could be fugitive), we are also proposing a facility-wide chloroprene emissions cap for all neoprene production emission sources as a backstop, the result of which is based on our post-control emissions and risk for all neoprene emission sources emitting chloroprene that are reported in the emissions inventory and which is discussed in section III.B.2.b.v of this preamble.

Additional information on this evaluated control option to reduce chloroprene risk from fugitives from polymer batch reactors, emulsion storage vessels, strainers, and wash belt dryers with affected P&R I sources producing neoprene is found in the document titled *Analysis of Control Options for Process Vents and Storage Vessels to Reduce Residual Risk of Chloroprene Emissions at P&R I Affected Sources Producing Neoprene,* which is available in the docket for this action.

ii. Wastewater

Chloroprene is emitted into the air from wastewater collection, storage, and treatment systems that are uncovered or open to the atmosphere through volatilization of the compound at the liquid surface. Emissions occur by diffusive or convective means, or both. Diffusion occurs when organic concentrations at the water surface are much higher than ambient concentrations. The organics volatilize, or diffuse into the air, to reach equilibrium between aqueous and vapor phases. Convection occurs when air flows over the water surface, sweeping organic vapors from the water surface into the air. The rate of volatilization is related directly to the speed of the air flow over the water surface.

Similar to the HON, as discussed in section III.B.2.a.iv of this preamble, the current P&R I standards divide wastewater streams into Group 1 wastewater streams, which require controls, and Group 2 wastewater streams, which generally do not require controls provided they remain below Group 1 thresholds. The Group 1 and Group 2 designations for wastewater streams are based on volumetric flow rate and total annual average organic HAP concentration. P&R I specifies performance standards for treating Group 1 wastewater streams using open or closed biological treatment systems or using a design steam stripper with vent control. For APCDs (*e.g.,* thermal oxidizers) used to control emissions from collection system components, steam strippers, or closed biological treatment, P&R I provides owners or

operators several compliance options, including 95 percent destruction efficiency, a 20 ppmv outlet concentration, or design specifications for temperature and residence time. We provide more details about wastewater streams in our technology review.

Results from our risk assessment indicate that, for the Neoprene Production source category, 18 percent of the risk (*i.e.,* 80-in-1 million) and 2.6 of the 17.5 tpy of chloroprene in the reported emissions inventory are from emissions associated with wastewater. For wastewater, we are proposing to define ''in chloroprene service'' in P&R I at 40 CFR 63.482 to mean each wastewater stream that contains total annual average concentration of chloroprene greater than or equal to 10.0 ppmw at any flow rate. To address the risk from chloroprene emissions related to wastewater associated with affected P&R I sources producing neoprene, we are proposing that owners and operators manage and treat any existing wastewater streams that are ''in chloroprene service'' (see proposed 40 CFR 63.501(a)(10)(iv)) as they would a Group 1 wastewater stream. Additional information on this evaluated control option to reduce chloroprene risk from wastewater streams associated with affected P&R I sources producing neoprene is found in the document titled *Analysis of Control Options for Wastewater Streams to Reduce Residual Risk of Chloroprene From Neoprene Production Processes Subject to P&R I,* which is available in the docket for this action.

Finally, for consistency with our proposal for the HON to eliminate EtO emissions from wastewater being injected into heat exchange systems (see section III.B.2.a.iv of this preamble), we are also proposing to prohibit owners and operators from injecting water into or disposing of water through any heat exchange system in an EPPU if the water contains any amount of chloroprene, has been in contact with any process stream containing chloroprene, or the water is considered wastewater as defined in 40 CFR 63.482 (see proposed 40 CFR 63.502(n)(8)). The result of all these wastewater controls will reduce chloroprene emissions from wastewater from 2.6 tpy to 0.18 tpy in the reported emissions inventory.

iii. Maintenance Vents

We are proposing at 40 CFR 63.485(x) and 40 CFR 63.487(i) the new term ''maintenance vent'' for process vents that are only used as a result of startup, shutdown, maintenance, or inspection of equipment where equipment is emptied, depressurized, degassed, or placed into service. We provide more details about maintenance vents in section III.D.4 of this preamble as well. We evaluated the option of limiting the amount of chloroprene that a neoprene production facility can emit annually through maintenance vents (*i.e.,* equipment openings). Using their reported emissions, we determined that in order to reduce the neoprene source category risk to an acceptable level, the one neoprene production facility would need to (in addition to complying with other standards designed to reduce chloroprene risk) maintain its combined total chloroprene maintenance vent emission releases at less than or equal to 1.0 tpy. For this reason, we are proposing a requirement that owners and operators cannot release more than 1.0 tons of chloroprene from all maintenance vents combined in any consecutive 12-month period (see proposed 40 CFR 63.485(z) and 40 CFR 63.487(i)(4)). We note that, based on reported emissions, the neoprene production facility is already meeting this proposed 1.0 tpy chloroprene maintenance vent limit from its neoprene processes.[56]

iv. PRDs

P&R I currently regulates PRDs through equipment leak provisions that are applied only after the pressure release event relief occurs (*i.e.,* conduct monitoring with EPA Method 21 of Appendix A–7 to 40 CFR part 60 after each pressure release using a leak definition of 500 ppm) to ensure they are properly reseated and not leaking after a PRD release occurs; however, these provisions do not apply to an emissions release from a PRD (see section III.D.2 of this preamble for more detail). While we are not aware of PRD releases occurring from the Neoprene Production source category, we are concerned that allowing them could compound already unacceptable risk. Thus, while the EPA is proposing to set work practice standards for PRD releases (see section III.D.2 of the preamble), given the high potential risk posed by chloroprene from PRD releases, we are also proposing at 40 CFR 63.165(e)(3)(v)(D) (by way of proposed 40 CFR 63.502(a)(2)) that any release event from PRDs in chloroprene service in the Neoprene Production source category facilities is a violation of the standard. This is the same provision that we finalized in the MON for PRDs in EtO service (see 40 CFR 63.2493(d)(4)(iv)), and that we are proposing for HON PRDs in EtO service, to ensure that these emissions are controlled and do not bypass controls.

v. Summary

For process vents, storage vessels, wastewater, maintenance vents, and PRDs, we considered the control options described above for reducing chloroprene risk from the Neoprene Production source category. To reduce risk from the source category to an acceptable level, we propose to require control of chloroprene for: (1) Process vents, (2) storage vessels, and (3) wastewater ''in chloroprene service'' (defined in this proposal). We are also proposing requirements to reduce chloroprene emissions from maintenance vents and PRDs. For process vents and storage vessels in chloroprene service, we are proposing owners and operators reduce emissions of chloroprene by venting emissions through a closed-vent system to a control device that reduces chloroprene by greater than or equal to 99.9 percent by weight, to a concentration less than 1 ppmv for each process vent and storage vessel, or to less than 5 lb/yr for all combined process vents. For wastewater in chloroprene service, we are proposing to revise the Group 1 wastewater stream threshold for sources to include wastewater streams in chloroprene service. For maintenance vents, we are proposing a requirement that owners and operators cannot release more than 1.0 ton of chloroprene from all maintenance vents combined in any consecutive 12-month period. For PRDs in chloroprene service, we are proposing that any atmospheric PRD release is a violation of the standard. Lastly, in order to ensure reductions in emissions and risk given that many sources within the neoprene process are fugitive in nature, we are also proposing a facility-wide chloroprene emissions cap for all neoprene production emission sources as a backstop. After application of the proposed controls to address unacceptable risk for process vents, storage vessels, wastewater, maintenance vents, and PRDs, and including remaining sources of emissions in the emissions inventory (*e.g.,* equipment leaks), we are proposing at 40 CFR 63.483(a)(10) a facility-wide chloroprene emissions cap of 3.8 tpy in any consecutive 12-month period for all neoprene production emission sources.

In all cases, we are proposing that if information exists that suggests chloroprene could be present in these processes, then the emission source is considered to be in chloroprene service unless sampling and analysis is performed to demonstrate that the

[56] From reported Neoprene Unit Condition XVII permitted emissions.

emission source does not meet the definition of being in chloroprene service. We are proposing sampling and analysis procedures at 40 CFR 63.509. Examples of information that could suggest chloroprene is present in a process stream include calculations based on safety data sheets, material balances, process stoichiometry, or previous test results provided that the results are still relevant to the current operating conditions.

Based on the proposed applicability thresholds, we expect that only one facility (*i.e.,* the neoprene production facility) will be affected by the proposed chloroprene-specific standards, and we anticipate that this facility will be subject to the process vent, storage vessel, wastewater, maintenance vent, and PRD provisions.

3. Determination of Risk Acceptability After Proposed Emission Reductions

As noted in sections II.A.1 and II.E of this preamble and in the 1989 Benzene NESHAP, the EPA sets standards under CAA section 112(f)(2) using a two-step approach, with an analytical first step to determine whether risks are acceptable. This determination ''considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime [cancer] risk (MIR) of approximately 1 in 10 thousand'' (54 FR 38044, 38045/col. 1, September 14, 1989). In the 1989 Benzene NESHAP, the EPA explained that ''[i]n establishing a presumption for MIR, rather than a rigid line for acceptability, the Agency intends to weigh it with a series of other health measures and factors'' (*id.,* at 38045/col. 3). ''As risks increase above this benchmark, they become presumptively less acceptable under section 112, and would be weighed with the other health risk measures and information in making an overall judgement on acceptability'' (*id.*).

a. SOCMI

Presented in the Table 4 of this preamble are the levels of emissions control proposed to address unacceptable risks for the SOCMI source category. This includes reducing emissions of EtO for HON processes and requiring more stringent controls for process vents, storage vessels, equipment leaks, heat exchange systems, wastewater, maintenance vents, flares, and PRDs without considering costs.

TABLE 4—NATIONWIDE ETO RISK IMPACT CONTROL OPTIONS FOR THE SOCMI SOURCE CATEGORY

Emission source	Description of proposed option	Percent reduction of EtO emissions
Process Vent Controls [1]	Control emissions through a closed-vent system to a non-flare control device that reduces EtO by greater than or equal to 99.9 percent by weight, to a concentration less than 1 ppmv for each process vent, or to less than 5 lb/yr for all combined process vents.	99.9 percent.
Storage Vessel Controls [1]	Control emissions through a closed-vent system to a non-flare control device that reduces EtO by greater than or equal to 99.9 percent by weight or to a concentration less than 1 ppmv.	99.9 percent.
Equipment Leak Controls	Monthly M21 monitoring of valves and connectors with a 100 ppm leak definition and monthly monitoring of pumps at 500 ppm leak definition without skip periods or delay of repair for these pieces of equipment that are in EtO service.	70–74 percent.
Heat Exchange Systems Controls	Weekly monitoring for leaks using the Modified El Paso Method and repair of leaks required no later than 15 days after date of weekly sampling occurs.	93 percent.
Wastewater Controls	Control all wastewater with a total annual average concentration of EtO greater than or equal to 1 ppmw at any flow rate as if it were Group 1 wastewater.	98 percent.
Maintenance Vent Emission Cap	1.0 tpy limit	Proposing to limit to existing level in emissions inventory.
Flare Load Limit	20 tpy limit on amount of EtO that could be sent to a flare	Site specific and would likely require two facilities to use a 99.9 percent control rather than a flare achieving 98 percent.
PRD releases	Work practice standards make atmospheric releases from PRDs in EtO service a violation from the standard.	Assumed 99.9 percent control, as it would be controlled as a process vent.

[1] Flares may also be used up to the flare load limit, though we do not expect this to occur given facilities would need to meet these more stringent control requirements after reaching the 20 tpy load limit.

For the SOCMI source category, after implementation of the proposed controls to address unacceptable risks, the MIR is reduced to 100-in-1 million (down from 2,000-in-1 million) with no facilities or populations exposed to risk levels greater than 100-in-1 million. The total population exposed to risk levels greater than or equal to 1-in-1 million living within 50 km (~31 miles) of a facility would be reduced from 7.2 million people to 5.7 million people. The total estimated cancer incidence of 2 drops to 0.4 excess cancer cases per year. The maximum modeled chronic noncancer TOSHI for the source category remains unchanged. It is estimated to be 2 (for respiratory effects) at two different facilities (from maleic anhydride emissions at one facility and chlorine emissions at another facility) with approximately 83 people estimated to be exposed to a TOSHI greater than 1. The estimated worst-case off-site acute exposures to emissions from the SOCMI source category also remain unchanged, with a maximum modeled acute HQ of 3 based on the RELs for chlorine and acrolein. Table 5 of this preamble summarizes the reduction in cancer risks based on the proposed controls.

TABLE 5—CANCER RISKS AFTER IMPLEMENTATION OF PROPOSED CONTROL FOR THE SOCMI SOURCE CATEGORY

Control scenario	MIR (x-in-1 million)	Population (≥1-in-1 million)	Population (>100-in-1 million)	Cancer incidence
Pre-Control Baseline	2,000	7,200,000	87,000	2
Post-Control	100	5,700,000	0	0.4

As noted earlier in this section, the EPA considers an MIR of ''approximately 1-in-10 thousand'' (*i.e.,* 100-in-1 million) to be the presumptive limit of acceptability (54 FR 38045, September 14, 1989) and the proposed controls lower the MIR to 100-in-1 million. This is a significant reduction from the pre-control MIR of 2,000-in-1 million. For noncancer effects, the EPA has not established under section 112 of the CAA a numerical range for risk acceptability as it has with carcinogens, nor has it determined that there is a bright line above which acceptability is denied. However, the Agency has established that, as exposure increases above a reference level (as indicated by a HQ or TOSHI greater than 1), confidence that the public will not experience adverse health effects decreases and the likelihood that an effect will occur increases.

In considering the potential implications of HIs above 1 (and equal to 2) for chlorine and maleic anhydride emissions, we note the basis and development of the underlying noncancer health benchmarks. Both chlorine and maleic anhydride are portal of entry irritants that, with sufficient exposure, act as potent irritants of the eyes and respiratory tract. Chronic exposure in human workers has been associated with airflow obstruction and asthma-like attacks, indicating a potential for people with asthma to have greater sensitivity to effects of these pollutants. The health benchmarks for chlorine and maleic anhydride represent exposure levels at (and below) which there is not likely to be appreciable risk of deleterious effects over a lifetime exposure, including for sensitive groups; however, the EPA has not estimated an exposure level at and above which an appreciable risk of deleterious effects would be expected.

In the case of chlorine, the sensitive effect on which the benchmark is based is an increased risk of nasal lesions. The chronic exposure level at which this effect, which was observed in an experimental animal study, is estimated is 0.004 mg/m^3.[57] [58] In the case of maleic anhydride, the sensitive effect is the occurrence of mild hyperplasia in the nasal epithelium.[59] [60] The chronic exposure level at which this effect, which was observed in several experimental animal studies, is estimated is 0.021 mg/m^3. To derive the chronic health benchmarks, both of these human equivalent exposure values were divided by 30 to account for the potential for people to be more sensitive than animals and for some population groups, such as people with asthma, to be more sensitive than the general population.

For both chlorine and maleic hydride, we note the small size of the HI (2) in relation to the total uncertainty factor of 30 used in derivation of both health benchmarks. In so doing, we also note a somewhat reduced confidence in a conclusion that exposure at these levels is without appreciable risk due to uncertainty, particularly for sensitive populations. Finally, we note that the population exposed to a TOSHI greater than 1 is relatively small (83 people).

Therefore, considering all health information, including risk estimation uncertainty, the EPA proposes that the resulting risks after implementation of the proposed controls for the SOCMI source category detailed in Section III.B.2.a. would be acceptable. We solicit comment on all the proposed control requirements to reduce risk to an acceptable level for the SOCMI source category.

b. Neoprene Production

Presented in Table 6 of this preamble are the levels of emissions control proposed to address unacceptable risks for the Neoprene Production source category. This includes emission reductions of chloroprene from process vents, storage vessels, wastewater, maintenance vents, and PRDs without considering costs, as well as a facility-wide emissions cap for chloroprene from all Neoprene Production emission sources.

TABLE 6—NATIONWIDE CHLOROPRENE RISK IMPACT CONTROL OPTIONS FOR THE NEOPRENE PRODUCTION SOURCE CATEGORY

Emission source	Description of proposed option	Percent reduction of chloroprene emissions
Process Vent Controls	Control emissions through a closed-vent system to a non-flare control device that reduces chloroprene by greater than or equal to 99.9 percent by weight, to a concentration less than 1 ppmv for each process vent, or to less than 5 lb/yr for all combined process vents. This includes also capturing and controlling emissions from opening of the polymer reactors and strainers.	99.9 percent.
Storage Vessel Controls	Control emissions through a closed-vent system to a non-flare control device that reduces chloroprene by greater than or equal to 99.9 percent by weight or to a concentration less than 1 ppmv. This includes also capturing and controlling emissions from opening and/or degassing of the unstripped resin emulsion tanks.	99.9 percent.

[57] Agency for Toxic Substances and Disease Registry (ATSDR). 2010. Toxicological profile for Chlorine. Atlanta, GA: U.S. Department of Health and Human Services, Public Health Service.

[58] Klonne DR, Ulrich CE, Riley MG, et al. 1987. One-year inhalation toxicity study of chlorine in Rhesus monkeys (Macaca mulatta). Fundam Appl Toxicol 9:557–572.

[59] Office of Environmental Health Hazard Assessment (OEHHA). 2008. Technical Supporting Document for Noncancer RELs, Appendix D3.

[60] Short RD, Minor JL, Winston JM, Seifter J, and Lee C. 1978. Inhalation of ethylene dibromide during gestation by rats and mice. Toxicol. Appl. Pharmacol. 46:173–182.

TABLE 6—NATIONWIDE CHLOROPRENE RISK IMPACT CONTROL OPTIONS FOR THE NEOPRENE PRODUCTION SOURCE CATEGORY—Continued

Emission source	Description of proposed option	Percent reduction of chloroprene emissions
Wastewater Controls	Control all wastewater with a total annual average concentration of chloroprene greater than or equal to 10 ppmw at any flow rate as if it were Group 1 wastewater.	93 percent.
Maintenance Vent Emission Cap	1.0 tpy limit	Proposing to limit to existing level in emissions inventory.
PRD releases	Work practice standards make atmospheric releases from PRDs in chloroprene service a violation from the standard.	None were reported in emissions inventory, proposing standard to ensure this remains the case.
Facility-wide emissions cap for chloroprene from all Neoprene Production emission sources.	3.8 tpy limit, which is a backstop to ensure reductions in emissions and risk given that many sources within the neoprene process are fugitive.	79 percent.

For the Neoprene Production source category, after implementation of the proposed controls to address unacceptable risks, the MIR is reduced to 100-in-1 million (down from 500-in-1 million) with zero people exposed to risk levels greater than 100-in-1 million. The total population exposed to risk levels greater than or equal to 1-in-1 million living within 50 km (~31 miles) of the facility would be reduced from 690,000 people to 48,000 people. The total estimated cancer incidence of 0.05 drops to 0.008 excess cancer cases per year. Table 7 of this preamble summarizes the reduction in cancer risks based on the proposed controls.

TABLE 7—NATIONWIDE RISK IMPACTS AFTER IMPLEMENTATION OF PROPOSED CONTROLS FOR THE NEOPRENE PRODUCTION SOURCE CATEGORY

Control scenario	MIR (x-in-1 million)	Population (≥1-in-1 million)	Population (>100-in-1 million)	Cancer incidence
Pre-Control Baseline	500	690,000	2,100	0.05
Post-Control	100	48,000	0	0.008

Again, as noted earlier in this section, the EPA considers an MIR of ''approximately 1-in-10 thousand'' (*i.e.,* 100-in-1 million) to be the presumptive limit of acceptability (54 FR 38045, September 14, 1989) and the proposed controls lower the MIR to 100-in-1 million, a significant reduction in the pre-control MIR of 500-in-1 million. Therefore, after implementation of the proposed controls for the Neoprene Production source category detailed in Section III.B.2.a. and considering all health information, including risk estimation uncertainty, the EPA proposes that the resulting risks would be acceptable for the Neoprene Production source category. We solicit comment on all the proposed control requirements to reduce risk to an acceptable level for the source category.

4. Ample Margin of Safety Analysis

The second step in the residual risk decision framework is a determination of whether the emission standards proposed to achieve an acceptable risk level provide an ample margin of safety to protect public health, or whether more stringent emission standards would be required for this purpose. In making this determination, we considered the health risk and other health information considered in our acceptability determination, along with additional factors not considered in the risk acceptability step, including costs and economic impacts of controls, technological feasibility, uncertainties, and other relevant factors, consistent with the approach of the 1989 Benzene NESHAP. Table 8 of this preamble presents the summary of costs and EtO emission reductions we estimated for the proposed control requirements to get the risks to an acceptable level for the SOCMI source category. For details on the assumptions and methodologies used in the costs and impacts analyses, see the technical documents titled, *Analysis of Control Options for Process Vents and Storage Vessels to Reduce Residual Risk of Ethylene Oxide in the SOCMI Source Category for Processes Subject to HON; Analysis of Control Options for Equipment Leaks to Reduce Residual Risk of Ethylene Oxide in the SOCMI Source Category for Processes Subject to HON; Analysis of Control Options for Heat Exchange Systems to Reduce Residual Risk of Ethylene Oxide in the SOCMI Source Category for Processes Subject to HON; Analysis of Control Options for Wastewater Streams to Reduce Residual Risk of Ethylene Oxide in the SOCMI Source Category for Processes Subject to HON;* and *Analysis of Control Options for Flares to Reduce Residual Risk of Ethylene Oxide in the SOCMI Source Category for Processes Subject to HON,* which are available in the docket for this rulemaking. We note that for two fugitive EtO emission sources (*i.e.,* equipment leaks and wastewater), emission reductions (and subsequent cost-effectiveness values for EtO) differ from reductions expected to occur from reported emissions inventories due to use of model plants, engineering assumptions made to estimate baseline emissions, and uncertainties in how fugitive emissions may have been calculated for reported inventories compared to our model plants analyses (and are documented in the aforementioned technology review memorandum).

TABLE 8—NATIONWIDE ETO EMISSION REDUCTIONS AND COST IMPACTS FOR CONTROL OPTIONS CONSIDERED FOR HON PROCESSES

Control option	Total capital investment (MM$)	Total annualized costs (MM$/yr)	EtO emission reductions (tpy)	Cost effectiveness ($/ton EtO)
A—Process Vent & Storage Vessel Controls	10.2	5.28	32.0	165,000
B—Equipment Leak Controls	0.18	3.53	42.3	83,500
C—Heat Exchange System Controls	0.043	0.19	6.06	31,400
D—Wastewater Controls	65.8	41.1	396	103,800
E—Maintenance Vent Emission Cap [1]	0.017	0.0027	0	N/A
F—Flare Load Limit	0.28	0.46	5.04	91,300
Total (A + B + C + D + E + F)	76.5	50.6	481	105,000

[1] We anticipate that all facilities with HON processes that use and emit EtO can already meet the proposed maintenance vent emissions limit without additional control, thus only minimal costs are included.

Table 9 of this preamble presents the summary of costs and chloroprene emission reductions we estimated for the proposed control options to get the risks to an acceptable level for the Neoprene Production source category. For details on the assumptions and methodologies used in the costs and impacts analyses, see the technical documents titled *Analysis of Control Options for Process Vents and Storage Vessels to Reduce Residual Risk of Chloroprene Emissions at P&R I Affected Sources Producing Neoprene;* and *Analysis of Control Options for Wastewater Streams to Reduce Residual Risk of Chloroprene From Neoprene Production Processes Subject to P&R I,* which are available in the docket for this rulemaking. We note that chloroprene emission reductions from wastewater (and subsequent cost-effectiveness values for chloroprene from wastewater) differ from reductions expected to occur from reported emissions inventories due to use of model plants, engineering assumptions made to estimate baseline emissions, and uncertainties in how fugitive emissions may have been calculated for reported inventories compared to our model plants analysis (and are documented in the aforementioned memorandum).

TABLE 9—NATIONWIDE CHLOROPRENE EMISSION REDUCTIONS AND COST IMPACTS FOR CONTROL OPTIONS CONSIDERED FOR P&R I PROCESSES PRODUCING NEOPRENE

Control option	Total capital investment (MM$)	Total annualized costs (MM$/yr)	Chloroprene emission reductions (tpy)	Cost effectiveness ($/ton chloroprene)
A—Process Vent, Storage Vessel, & Maintenance Vent Controls	10.1	2.80	11.3	247,800
B—Wastewater Controls	5.84	7.56	17.7	427,000
Total (A + B)	15.9	10.4	29.0	359,000

For the ample margin of safety analyses, we evaluated the cost and feasibility of available control technologies that could be applied to HON processes and neoprene production processes to reduce risks further, considering all of the health risks and other health information considered in the risk acceptability determination described above and the additional information that can be considered only in the ample margin of safety analysis (*i.e.,* costs and economic impacts of controls, technological feasibility, uncertainties, and other relevant factors). We note that the EPA previously made a determination that the standards for the SOCMI source category and Neoprene Production source category provide an ample margin of safety to protect public health, and that the most significant changes since that determination were the revised 2016 IRIS inhalation URE for EtO and new 2010 IRIS inhalation URE for chloroprene. As such, we focused our ample margin of safety analysis on cancer risk for these two pollutants since EtO, even after application of controls needed to get risks to an acceptable level, drives cancer risk and cancer incidence (*i.e.,* 60 percent of remaining cancer incidence is from EtO) for the SOCMI source category and almost all the remaining cancer risk and cancer incidence (*i.e.,* 99.995 percent of remaining cancer incidence) is from chloroprene for the Neoprene Production source category.

For the SOCMI source category, no other control options for EtO were identified beyond those proposed to reduce risks to an acceptable level. Furthermore, the proposed EtO controls for process vents, storage vessels, equipment leaks, heat exchange systems, wastewater, and PRDs to reduce risks to an acceptable level are far more stringent than other options we identified to control HAP generally (*i.e.,* see sections III.C and III.D of this preamble).

For chloroprene emissions from HON-subject sources, we identified control options for equipment leaks and maintenance activities in our review of these standards (see sections III.C.6 and III.D.4 of this preamble). These controls would likely reduce the cancer incidence and number of people exposed to risks greater than or equal to 1. However, the overall source category risk reductions would be relatively small. Only approximately 3 percent of the SOCMI source category cancer incidence after the proposed controls in section III.B.2 to reduce risks to an acceptable level is due to chloroprene emissions. Also, of the 5.7 million people with cancer risks greater than or equal to 1-in-1 million after the proposed controls to reduce risks to an

acceptable level, approximately 48,000 people (or 0.8 percent of the total) have risks greater than or equal to 1-in-1 million due to chloroprene emissions from the SOCMI source category. However, as described in sections III.C.6 and III.D.4, the options we evaluated for equipment leaks and maintenance activities beyond the standards currently in the HON (or that are being proposed for maintenance activities) are not cost-effective.

For the Neoprene Production source category, we did not identify control options for chloroprene emissions from process vents, storage vessels, wastewater, maintenance vents, and PRDs that reduced emissions beyond those proposed in section III.B.2 to reduce risks to an acceptable level. We also considered other potential sources of chloroprene, in particular heat exchange systems and equipment leaks. For heat exchange systems, no chloroprene emissions were reported in the emissions inventory from this source and as such, no risk reductions would be realized by requiring more stringent controls. For equipment leaks, additional control options were identified that could reduce risks further from this source and are discussed as part our technology review (see section III.C.6 of this preamble). The options would reduce chloroprene equipment leak emissions by 10–20 percent. Approximately 14 percent of the Neoprene Production source category cancer incidence after the proposed controls in section III.B.2 to reduce risks to an acceptable level is due to chloroprene emissions from equipment leaks. Also, of the 48,000 people with cancer risks greater than or equal to 1-in-1 million after the proposed controls to reduce risks to an acceptable level, approximately 16,000 people (or 34 percent of the total) have risks greater than or equal to 1-in-1 million due to chloroprene emissions from equipment leaks. Therefore, a 10–20 percent reduction in equipment leak emissions would reduce the cancer incidence by approximately 1 to 4 percent and the number of people with cancer risks greater than or equal to 1-in-1 million by approximately 2,000 to 3,000 people (3 to 7 percent of the total). However, as described in sections III.C and III.D, the options we evaluated for equipment leaks are not cost-effective.

In summary, based on our ample margin of safety analysis, we propose that controls to reduce EtO emissions at HON processes and chloroprene emissions at neoprene production processes to get risks to an acceptable level would also provide an ample margin of safety to protect public health. We also note the proposed changes to the flare requirements, proposed standards for dioxins/furans, and proposed standards to remove SSM exemptions (or provide alternative standards in limited instances) that are in this proposed action and that we are proposing under CAA sections 112(d)(2) and (3) will achieve additional reductions in emissions and further strengthen our conclusions that the standards continue to provide an ample margin of safety to protect public health for the SOCMI and Neoprene Production source categories.

5. Adverse Environmental Effects

Based on our screening assessment of environmental risk presented in section III.A.4 of this preamble, we did not identify any areas of concern with respect to environmental risk. Therefore, we have determined that HAP emissions from the source categories do not result in an adverse environmental effect, and we are proposing that it is not necessary to set a more stringent standard to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

C. What are the results and proposed decisions based on our CAA section 112(d)(6) technology review and CAA section 111(b)(1)(B) NSPS reviews, and what are the rationale for those decisions?

In addition to the proposed EtO- and chloroprene-specific requirements discussed in section III.B.2 of this preamble, under CAA section 112(d)(6) we also evaluated developments in practices, processes, and control technologies for heat exchange systems, storage vessels, process vents, transfer racks, wastewater, and equipment leaks for processes subject to the HON, P&R I, and P&R II (see sections III.C.1 through III.C.6 of this preamble, respectively). Under CAA section 111(b)(1)(B), for the review of NSPS subpart VVa, we evaluated BSER for equipment leaks (see section III.C.6.b of this preamble); and for the review of NSPS subparts III, NNN, and RRR we evaluated BSER for process vents associated with air oxidation units, distillation operations, and reactor processes, respectively (see section III.C.3.b of this preamble). We analyzed costs and emissions reductions for each emission source (*e.g.,* process vents) by each rule. For NSPS, we determined cost-effectiveness, cost per ton of emissions reduced, on a VOC basis. For NESHAP, we determined cost-effectiveness on a HAP basis from the VOC emissions. We also evaluated fenceline monitoring as a development in practices considered under CAA section 112(d)(6) for the purposes of managing fugitive emissions from sources subject to the HON and P&R I (see section III.C.7 of this preamble).

1. Standards for Heat Exchange Systems

Heat exchangers are devices or collections of devices used to transfer heat from process fluids to another process fluid (typically water) without intentional direct contact of the process fluid with the cooling fluid (*i.e.,* non-contact heat exchanger). There are two types of heat exchange systems: Closed-loop recirculation systems and once-through systems. Closed-loop recirculation systems use a cooling tower to cool the heated water leaving the heat exchanger and then return the newly cooled water to the heat exchanger for reuse. Once-through systems typically use surface freshwater (*e.g.,* from rivers) as the influent cooling fluid to the heat exchangers, and the heated water leaving the heat exchangers is then discharged from the facility. At times, the internal tubing material of a heat exchanger can corrode or crack, allowing some process fluids to mix or become entrained with the cooling water. Pollutants in the process fluids may subsequently be released from the cooling water into the atmosphere when the water is exposed to air (*e.g.,* in a cooling tower for closed-loop systems or trenches/ponds in a once-through system). The term ''heat exchange system'' is defined in HON and P&R I at 40 CFR 63.101 and 40 CFR 63.482 (which references 40 CFR 63.101) as any cooling tower system or once-through cooling water system (*e.g.,* river or pond water). A heat exchange system can include more than one heat exchanger and can include an entire recirculating or once-through cooling system. However, the HON and P&R I do not describe a heat exchanger, closed-loop recirculation system, or once-through cooling system as part of its definition of ''heat exchange system''. Therefore, we are proposing to revise the definition of ''heat exchange system'' at 40 CFR 63.101 and 40 CFR 63.482 (which references 40 CFR 63.101) to mean a device or collection of devices used to transfer heat from process fluids to water without intentional direct contact of the process fluid with the water (*i.e.,* non-contact heat exchanger) and to transport and/or cool the water in a closed-loop recirculation system (cooling tower system) or a once-through system (*e.g.,* river or pond water). This is consistent with the definition of ''heat exchange system'' used in the MON. We are also

proposing (as is done in the MON) to make clear in this definition that: (1) For closed-loop recirculation systems, the heat exchange system consists of a cooling tower, all CMPU heat exchangers that are in organic HAP service (for HON) or all EPPU heat exchangers that are in organic HAP service (for P&R I), serviced by that cooling tower, and all water lines to and from these process unit heat exchangers.; (2) for once-through systems, the heat exchange system consists of all heat exchangers that are in organic HAP service, servicing an individual CMPU (for HON) or EPPU (for P&R I) and all water lines to and from these heat exchangers; (3) sample coolers or pump seal coolers are not considered heat exchangers for the purpose of this proposed definition and are not part of the heat exchange system; and (4) intentional direct contact with process fluids results in the formation of a wastewater. This proposed definition would also apply to heat exchange systems in ethylene oxide service as described in section III.B.2.iii of this preamble.

The HON and P&R I include an LDAR program for owners or operators of certain heat exchange systems which meets the requirements of 40 CFR 63.104 (National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry). The LDAR program specifies that heat exchange systems be monitored for leaks of process fluids into cooling water and that owners or operators take actions to repair detected leaks within 45 days. Owners or operators may delay the repair of leaks if they meet the applicable criteria in 40 CFR 63.104. The current HON and P&R I MACT standards for heat exchange systems allow the use of any method listed in 40 CFR part 136 to be used to sample cooling water for leaks for the HAP listed in Table 4 to subpart F (for HON) or Table 5 to 40 CFR 63, subpart U (for P&R I) (recirculating systems) and Table 9 to subpart G (for HON) or Table 5 to 40 CFR 63, subpart U (for P&R I) (once-through systems) (and other representative substances such as TOC or VOC that can indicate the presence of a leak can also be used). A leak in the heat exchange system is detected if the exit mean concentration of HAP (or other representative substance) in the cooling water is at least 1 ppmw or 10 percent greater than (using a one-sided statistical procedure at the 0.05 level of significance) the entrance mean concentration of HAP (or other representative substance) in the cooling water. Furthermore, the HON and P&R I allow owners or operators to monitor for leaks using a surrogate indicator of leaks (*e.g.,* ion-specific electrode monitoring, pH, conductivity), provided that certain criteria in 40 CFR 63.104(c) are met. The HON and P&R I initially require 6 months of monthly monitoring for existing heat exchange systems. Thereafter, the frequency can be reduced to quarterly. The leak monitoring frequencies are the same whether water sampling and analysis or surrogate monitoring is used to identify leaks.

Our technology review identified one development in LDAR practices and processes for heat exchange systems, the use of the Modified El Paso Method [61] to monitor for leaks. The Modified El Paso Method, which is included in the MON, EMACT standards, and the Petroleum Refinery Sector rule, was identified in our review of the RACT/BACT/LAER clearinghouse database. It is also required by the Texas Commission on Environmental Quality (TCEQ) for facilities complying with their highly reactive volatile organic compound (HRVOC) rule (*i.e.,* 30 Texas Administrative Code (TAC) Chapter 115, Subchapter H, Division 3). The Modified El Paso Method measures a larger number of compounds than the current methods required in the HON and P&R I and is more effective in identifying leaks. For heat exchange system LDAR programs, the compliance monitoring option, leak definition, and frequency of monitoring for leaks are all important considerations affecting emission reductions by identifying when there is a leak and when to take corrective actions to repair the leak. Therefore, we evaluated the Modified El Paso Method for use at HON and P&R I facilities, including an assessment of appropriate leak definitions and monitoring frequencies.

In order to identify an appropriate Modified El Paso Method leak definition for HON-subject facilities, we identified four rules, TCEQ's HRVOC rule, the MON, the EMACT standards, and the Petroleum Refinery Sector rule, all of which incorporate this monitoring method and have leak definitions corresponding to the use of this methodology. We also reviewed data submitted in response to a CAA section 114 request for the Ethylene Production RTR where facilities performed sampling using the Modified El Paso Method.

The TCEQ's HRVOC rule, the MON, the EMACT standards, and the Petroleum Refinery Sector rule have leak definitions of total strippable hydrocarbon concentration (as methane) in the stripping gas ranging from 3.1 ppmv to 6.2 ppmv. In addition, sources subject to the MON, the EMACT standards, or the Petroleum Refinery Sector rule may not delay the repair of leaks for more than 30 days where, during subsequent monitoring, a total strippable hydrocarbon concentration (as methane) in the stripping gas of 62 ppmv or higher is found. In reviewing the Ethylene Production RTR CAA section 114 data, a clear delineation in the hydrocarbon mass emissions data was noticed at 6.1 ppmv of total strippable hydrocarbon (as methane) in the stripping gas. In addition, given that both the leak concentration and water recirculation rate of the heat exchange system are key variables affecting the hydrocarbon mass emissions from heat exchange systems, the overall Ethylene Production RTR CAA section 114 data for all heat exchange systems sampled generally showed lower hydrocarbon mass emissions for leaks at or below 6.1 ppmv of total strippable hydrocarbon (as methane) in the stripping gas compared to leaks found above 6.1 ppmv of total strippable hydrocarbon (as methane) in the stripping gas. Taking into account the range of actionable leak definitions in use by other rules that require use of the Modified El Paso Method currently (*i.e.,* 3.1 ppmv-6.2 ppmv of total strippable hydrocarbon (as methane) in the stripping gas), and the magnitude of emissions for leaks as a result of total strippable hydrocarbon (as methane) in the stripping gas above 6.1 ppmv compared to leaks identified in the CAA section 114 sampling data as a result of other actionable leak definitions, we chose to evaluate a leak definition at the upper end of identified actionable leak definitions in our analysis. Thus, the Modified El Paso Method leak definition we evaluated was 6.2 ppmv of total strippable hydrocarbon concentration (as methane) in the stripping gas for both new and existing heat exchange systems, along with not allowing delay of repair of leaks for more than 30 days where, during subsequent monitoring, a total strippable hydrocarbon concentration (as methane) in the stripping gas of 62 ppmv or higher is found.

We determined an appropriate leak monitoring frequency by reviewing the

[61] The Modified El Paso Method uses a dynamic or flow-through system for air stripping a sample of the water and analyzing the resultant off-gases for VOC using a common flame ionization detector (FID) analyzer. The method is described in detail in Appendix P of the TCEQ's Sampling Procedures Manual: *The Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound (VOC) Emissions from Water Sources.* Appendix P is included in the docket for this rulemaking.

current monitoring frequencies that HON and P&R I facilities are subject to, along with frequencies for the TCEQ's HRVOC rule, the MON, the EMACT standards, and the Petroleum Refinery Sector rule, and information gathered in the Ethylene Production RTR CAA section 114 survey. As a first step, we reviewed whether it was still reasonable to specify more frequent monitoring for a 6-month period after repair of leaks. Our review of the Ethylene Production RTR CAA section 114 data showed that no leaks were identified during the 6-month period post repair for any of the facilities that reported leak emissions in their heat exchange system compliance data. Thus, we find that re-monitoring once after repair of a leak, at the monitoring location where the leak was identified, is sufficient from a continuous compliance perspective to demonstrate a successful repair. The monitoring frequencies currently required by the HON and P&R I when no leaks are found were, thus, considered the base frequencies (*i.e.,* quarterly monitoring for existing and new heat exchange systems). Once we determined the base frequencies, we next considered more stringent monitoring frequencies. Both the Petroleum Refinery Sector rule, which includes monthly monitoring for existing sources, under certain circumstances, and the TCEQ HRVOC rule, which includes continuous monitoring provisions for existing and new sources, have more stringent monitoring frequencies. However, the incremental HAP cost effectiveness to change from quarterly to monthly monitoring and monthly to continuous monitoring was found to be $40,000/ton and $500,000/ton, respectively. We conclude that these costs are not reasonable for HON and P&R I facilities. Thus, we chose to evaluate quarterly monitoring for existing and new heat exchange systems (*i.e.,* the base monitoring frequency currently in the rule).

Based on this technology review, we identified the following control option for heat exchanger systems as a development in practice that can be implemented at a reasonable cost: Quarterly monitoring for existing and new heat exchange systems (after an initial 6 months of monthly monitoring) with the Modified El Paso Method and a leak definition of 6.2 ppmv of total strippable hydrocarbon concentration (as methane) in the stripping gas.

We then estimated the impacts of this control option assuming that all 207 HON facilities and 19 P&R I facilities (10 of which are collocated with HON facilities) would be affected by requiring the use of the Modified El Paso Method. As part of our analysis, we assumed owners or operators conducting quarterly monitoring for three or more of these heat exchange systems would elect to purchase a stripping column and FID analyzer and perform in-house Modified El Paso monitoring (because the total annualized costs for in-house Modified El Paso monitoring are less than the costs for contracted services). In addition, we assumed repairs could be performed by plugging a specific heat exchanger tube, and if a heat exchanger is leaking to the extent that it needs to be replaced, then it is effectively at the end of its useful life. Therefore, we determined that the cost of replacing a heat exchanger is an operational cost that would be incurred by the facility as a result of routine maintenance and equipment replacement, and it is not attributable to the control option.

Table 10 of this preamble presents the nationwide impacts for requiring owners or operators at HON facilities (including 10 P&R I facilities collocated with HON facilities) to use the Modified El Paso Method and repair leaks of total strippable hydrocarbon concentration (as methane) in the stripping gas of 6.2 ppmv or greater. Table 11 of this preamble presents the nationwide impacts for requiring owners or operators at P&R I facilities (not collocated with HON facilities) to use the Modified El Paso Method and repair leaks of total strippable hydrocarbon concentration (as methane) in the stripping gas of 6.2 ppmv or greater. See the document titled *Clean Air Act Section 112(d)(6) Technology Review for Heat Exchange Systems Located in the SOCMI Source Category that are Associated with Processes Subject to HON and for Heat Exchange Systems that are Associated with Processes Subject to Group I Polymers and Resins NESHAP; and Control Option Impacts for Heat Exchange Systems that are Associated with Processes Subject to Group II Polymers and Resins NESHAP,* which is available in the docket for this rulemaking, for details on the assumptions and methodologies used in this analysis.

Based on the costs and emission reductions for the identified control option, we are proposing to revise the HON and P&R I for heat exchange systems pursuant to CAA section 112(d)(6). We are proposing at 40 CFR 63.104(g)(4) [62] to specify quarterly monitoring for existing and new heat exchange systems (after an initial 6 months of monthly monitoring) using the Modified El Paso Method and a leak definition of 6.2 ppmv of total strippable hydrocarbon concentration (as methane) in the stripping gas. Owners and operators would be required to repair the leak to reduce the concentration or mass emissions rate to below the leak action level as soon as practicable, but no later than 45 days after identifying the leak. We are also proposing at 40 CFR 63.104(j)(3) a delay of repair action level of total strippable hydrocarbon concentration (as methane) in the stripping gas of 62 ppmv, that if exceeded during leak monitoring, would require immediate repair (*i.e.,* the leak found cannot be put on delay of repair and would be required to be repaired within 30 days of the monitoring event). This would apply to both monitoring heat exchange systems and individual heat exchangers by replacing the use of any 40 CFR part 136 water sampling method with the Modified El Paso Method and removing the option that allows for use of a surrogate indicator of leaks. We are also proposing at 40 CFR 63.104(h) and (i) that repair include re-monitoring at the monitoring location where a leak is identified to ensure that any leaks found are fixed. We are proposing that none of these proposed requirements would apply to heat exchange systems that have a maximum cooling water flow rate of 10 gallons per minute or less because owners and operators of smaller heat exchange systems would be disproportionally affected and forced to repair leaks with a much lower potential HAP emissions rate than owners and operators of heat exchange systems with larger recirculation rate systems. Finally, we are proposing at 40 CFR 63.104(l) that the leak monitoring requirements for heat exchange systems at 40 CFR 63.104(b) may be used in limited instances, instead of using the Modified El Paso Method to monitor for leaks. We still maintain that the Modified El Paso Method is the preferred method to monitor for leaks in heat exchange systems and are proposing that the requirements of 40 CFR 63.104(b) may only be used if 99 percent by weight or more of all the organic compounds that could potentially leak into the cooling water have a Henry's Law Constant less than 5.0E–6 atmospheres per mole per cubic meter (atm-m^3/mol) at 25° Celsius. We selected this threshold based on a review of Henry's Law Constants for the HAP listed in Table 4 to subpart F of 40

[62] We note that each of the HON citations mentioned in this paragraph of this preamble are also applicable to P&R I facilities pursuant to 40 CFR 63.502(n). In order for these proposed HON citations to properly apply to P&R I facilities, we are proposing substitution rule text at 40 CFR 63.502(n)(7).

CFR part 63, as well as the water-soluble organic compounds listed in a recent alternative monitoring request from a MON facility.[63] Henry's Law Constants are available from the EPA at *https://comptox.epa.gov/dashboard/*. Examples of HAP that have a Henry's Law Constant of less than 5.0E–6 atm-m^3/mol at 25° Celsius are aniline, 2-chloroacetophenone, diethylene glycol diethyl ether, diethylene glycol dimethyl ether, dimethyl sulfate, 2,4-dinitrotoluene, 1,4-dioxane, ethylene glycol monoethyl ether acetate, ethylene glycol monomethyl ether acetate, methanol, and toluidine. Many of these HAP also have very high boiling points, with most above 300 Fahrenheit, which means they will generally stay in the cooling water and not be emitted to the atmosphere. We solicit comment on all of the proposed requirements related to heat exchange systems.

TABLE 10—NATIONWIDE EMISSIONS REDUCTIONS AND COST IMPACT FOR REQUIRING THE MODIFIED EL PASO METHOD FOR HEAT EXCHANGE SYSTEMS AT HON FACILITIES

Control option	Total capital investment ($)	Total annualized costs w/o credits ($/yr)	VOC emission table reductions (tpy)	HAP emission reductions (tpy)	HAP cost effectiveness w/o recovery credits ($/ton)	Total annualized costs with recovery credits ($/yr)	HAP cost effectiveness with recovery credits ($/ton)
1	770,000	228,000	934	93	2,440	(612,700)	(6,560)

TABLE 11—NATIONWIDE EMISSIONS REDUCTIONS AND COST IMPACT FOR REQUIRING THE MODIFIED EL PASO METHOD FOR HEAT EXCHANGE SYSTEMS AT P&R I FACILITIES

[Not collocated with HON facilities]

Control option	Total capital investment ($)	Total annualized costs w/o credits ($/yr)	VOC emission reductions (tpy)	HAP emission reductions (tpy)	HAP cost effectiveness w/o recovery credits ($/ton)	Total annualized costs with recovery credits ($/yr)	HAP cost effectiveness with recovery credits ($/ton)
1	48,300	9,900	33	3	3,050	(19,320)	(5,940)

2. Standards for Storage Vessels

Storage vessels are used to store liquid and gaseous feedstocks for use in a process, as well as to store liquid and gaseous products from a process. Most HON, P&R I, and P&R II storage vessels are designed for operation at atmospheric or near atmospheric pressures; pressure vessels are used to store compressed gases and liquefied gases. Atmospheric storage vessels are typically cylindrical with a vertical orientation, and they are constructed with either a fixed roof or a floating roof. Some, generally small, atmospheric storage vessels are oriented horizontally. Pressure vessels are either spherical or horizontal cylinders.

The HON requires owners and operators control emissions from storage vessels with capacities between 75 m^3 and 151 m^3 and a MTVP greater than or equal to 13.1 kPa, and storage vessels with capacities greater than or equal to 151 m^3 and a MTVP greater than or equal to 5.2 kPa. Storage vessels meeting this criteria are considered Group 1 storage vessels. Owners and operators of HON Group 1 storage vessels storing a liquid with a MTVP of total organic HAP less than 76.6 kPa are required to reduce emissions of organic HAP by 95 percent (or 90 percent if the storage vessel was installed on or before December 31, 1992) utilizing a closed vent system and control device, or reduce organic HAP emissions either by utilizing an IFR, an EFR, or by routing the emissions to a process or a fuel gas system, or vapor balancing. Owners and operators of HON Group 1 storage vessels storing a liquid with a MTVP of total organic HAP greater than or equal to 76.6 kPa are required to reduce emissions of organic HAP by 95 percent (or 90 percent if the storage vessel was installed on or before December 31, 1992) utilizing a closed vent system and control device, or reduce organic HAP emissions by routing the emissions to a process or a fuel gas system, or vapor balancing. In general, HON storage vessels that do not meet the MTVP and capacity thresholds described above are considered Group 2 storage vessels and are not required to apply any additional emission controls provided they remain under Group 1 thresholds; however, they are subject to certain monitoring, reporting, and recordkeeping requirements to ensure that they were correctly determined to be Group 2 and that they remain Group 2. Generally, the P&R I standards for storage vessels refer to the provisions in the HON. As such, owners and operators of Group 1 storage vessels subject to P&R I are required to control these vessels as prescribed in the HON.

The P&R II standards for storage tanks (P&R II uses the term ''storage tank'' in lieu of ''storage vessel'' like the HON and P&R I) do not specify any sort of stratification into groups. P&R II defines ''storage tank'' to mean tank or other vessel that is used to store liquids that contain one or more HAP compounds.

[63] In May 2021, EPA Region 4 received a request from Eastman Chemical Company to perform alternative monitoring instead of the Modified El Paso Method to monitor for leaks in Eastman's Tennessee Operations heat exchange systems, which primarily have cooling water containing soluble HAP with a high boiling point. Eastman specifically identified two HAP, 1,4-dioxane and methanol, which do not readily strip out of water using the Modified El Paso Method. Eastman's application for alternative monitoring included experimental data showing that the Modified El Paso Method would likely not identify a leak of these HAP in heat exchange system cooling water. Eastman conducted Modified El Paso Method monitoring under controlled scenarios to determine how much methanol and 1,4-dioxane would be detected. The scenarios included solutions of water and either methanol or 1,4-dioxane at concentrations of 1 part per million by weight (ppmw), 20 ppmw, and 100 ppmw (as measured using water sampling methods allowed previously in the MON). The Modified El Paso Method did not detect any methanol or 1,4-dioxane from the 1 ppmw and 20 ppmw solutions (*i.e.,* methanol and 1,4-dioxane did not strip out of the water in detectable amounts). The Modified El Paso Method detected very little HAP from the 100 ppmw solutions, with a maximum of only 0.17 percent of the 1,4-dioxane stripping out and being detected.

As previously mentioned, process vents, storage tanks, and wastewater systems combined are regulated according to a production-based emission rate (*e.g.,* pounds HAP per million pounds BLR or WSR produced) standard for existing sources in both BLR (130 pounds) and WSR (10 pounds). For new sources, BLR requires 98 percent reduction or an overall limit of 5,000 pounds of HAP per year. New WSR sources are limited to 7 pounds of HAP per million pounds WSR produced.

As part of our technology review for HON and P&R I storage vessels, we identified the following emission reduction options: (1) Revising the capacity and MTVP thresholds of the HON and P&R I to reflect the MON existing source threshold which requires existing storage vessels between 38 m^3 and 151 m^3 with a vapor pressure greater than or equal to 6.9 kPa to reduce emissions of organic HAP by 95 percent utilizing a closed vent system and control device, or reduce organic HAP emissions either by utilizing an IFR, an EFR, or by routing the emissions to a process or a fuel gas system, or vapor balancing; (2) in addition to requirements specified in option 1, requiring upgraded deck fittings [64] and controls for guidepoles for all storage vessels equipped with an IFR as already required in 40 CR 63, subpart WW; and (3) in addition to requirements specified in options 1 and 2, requiring the conversion of EFRs to IFRs through use of geodesic domes. We did not identify any control options for storage tanks subject to P&R II.

We identified option 1 as a technologically feasible development in practices, processes, and control technologies for storage vessels used at HON and P&R I facilities because it reflects requirements for similar storage vessels that are located at chemical manufacturing facilities subject to the MON. Option 2 is an improvement in practices because these upgraded deck fittings and guidepole controls have been required by other regulatory agencies and other EPA regulatory action (*e.g.,* Petroleum Refinery Sector rulemaking) since promulgation of the HON and P&R I and are being used by some of the sources covered by the SOCMI source category. Finally, we consider option 3 to be a development in control technology because we found that some storage vessels with EFRs have installed geodesic domes since promulgation of the HON and P&R I.

We used information about storage vessel capacity, design, and stored materials that industry provided to the EPA in response to our CAA section 114 request (see section II.C of this preamble) to evaluate the impacts of all three of the options presented. We identified eight HON storage vessels and two P&R I storage vessels from our CAA section 114 request that would be impacted by option 1; extrapolating this data to all 207 HON facilities and 19 P&R I facilities (10 of which are collocated with HON facilities), we estimated costs and emissions reductions for 63 HON storage vessels and 4 P&R I storage vessels that would be impacted by option 1. This same distribution would apply to option 2. For option 3, we identified five HON EFR storage vessels and zero P&R I EFR storage vessels from our CAA section 114 request that would be impacted; extrapolating this data to all 207 HON facilities and 19 P&R I facilities (10 of which are collocated with HON facilities) we estimated costs and emissions reductions for 159 HON EFR storage vessels and 5 P&R I EFR storage vessels [65] that would be impacted by option 3.

Table 12 of this preamble presents the nationwide impacts for the three options considered for HON facilities (including 10 P&R I facilities collocated with HON facilities). Table 13 of this preamble presents the nationwide impacts for the three options considered for P&R I facilities (not collocated with HON facilities). See the document titled *Clean Air Act Section 112(d)(6) Technology Review for Storage Vessels Located in the SOCMI Source Category that are Associated with Processes Subject to HON, Storage Vessels Associated with Processes Subject to Group I Polymers and Resins NESHAP, and Storage Vessels Associated with Processes Subject to Group II Polymers and Resins NESHAP,* which is available in the docket for this rulemaking, for details on the assumptions and methodologies used in this analysis, including the calculations we used to account for additional HON and P&R I facilities that did not receive a CAA section 114 request.

We determined that option 2 (which includes option 1) is cost effective and we are proposing, pursuant to CAA section 112(d)(6), to revise the Group 1 storage capacity criterion (for HON and P&R I storage vessels at existing sources) from between 75 m^3 and 151 m^3 to between 38 m^3 and 151 m^3 (see proposed Table 5 to subpart G), and require upgraded deck fittings and controls for guidepoles for all storage vessels equipped with an IFR as already required in 40 CR 63, subpart WW (see proposed 40 CFR 63.119(b)(5)(ix), (x), (xi), and (xii)). Considering the emissions reductions and high incremental cost effectiveness, we determined that storage vessel option 3 is not cost effective and are not proposing to revise the HON and P&R I to reflect the requirements of this option pursuant to CAA section 112(d)(6). We solicit comment on the proposed revisions for storage vessels.

TABLE 12—NATIONWIDE EMISSIONS REDUCTIONS AND COST IMPACTS OF CONTROL OPTIONS CONSIDERED FOR STORAGE VESSELS AT HON FACILITIES

Control option	Total capital investment ($)	Total annualized costs ($/yr)	VOC emission reductions (tpy)	HAP emission reductions (tpy)	HAP cost effectiveness ($/ton)	HAP incremental cost effectiveness (from Option 1) ($/ton)
1	1,727,000	327,400	58.0	40.6	8,070	.....
2	2,191,500	415,500	68.2	47.7	8,710	12,400
3	28,916,200	4,065,700	84.3	59.0	68,880	N/A

[64] Require all openings in an IFR (except those for automatic bleeder vents (vacuum breaker vents), rim space vents, leg sleeves, and deck drains) be equipped with a deck cover; and the deck cover would be required to be equipped with a gasket between the cover and the deck.

[65] Although no EFR tanks were reported for P&R I as part of our CAA section 114 request, we assumed five P&R I EFR storage vessels based on the number of HON average EFR storage vessels per HON CMPU that were reported.

TABLE 13—NATIONWIDE EMISSIONS REDUCTIONS AND COST IMPACTS OF CONTROL OPTIONS CONSIDERED FOR STORAGE VESSELS AT P&R I FACILITIES

[Not collocated with HON facilities]

Control option	Total capital investment ($)	Total annualized costs ($/yr)	VOC emission reductions (tpy)	HAP emission reductions (tpy)	HAP cost effectiveness ($/ton)	HAP incremental cost effectiveness (from Option 1) ($/ton)
1	109,000	20,700	3.7	2.6	7,960	.....
2	131,000	24,800	4.1	2.9	8,550	13,700
3	912,200	128,300	2.7	1.9	67,500	N/A

3. Standards for Process Vents

A process vent is a gas stream that is discharged during the operation of a particular unit operation (*e.g.,* separation processes, purification processes, mixing processes, reaction processes). The gas stream(s) may be routed to other unit operations for additional processing (*e.g.,* a gas stream from a reactor that is routed to a distillation column for separation of products), sent to one or more recovery devices, sent to a process vent header collection system (*e.g.,* blowdown system) and APCD (*e.g.,* flare, thermal oxidizer, carbon adsorber), and/or vented to the atmosphere. Process vents may be generated from continuous and/or batch operations,[66] as well as from other intermittent types of operations (*e.g.,* maintenance operations). If process vents are required to be controlled prior to discharge to the atmosphere to meet an applicable emissions standard, then they are typically collected and routed to an APCD through a closed vent system.

NSPS subparts III, NNN, and RRR regulate gas streams from air oxidation reactors, distillation columns, and other reactor processes, respectively. Importantly, the NSPS subparts III, NNN, and RRR formed the basis for the HON process vent MACT standards in that to be considered a HON process vent, some or all of the gas stream must originate as a continuous flow from an air oxidation reactor, distillation unit, or other reactor process during operation of a CMPU. P&R I regulates batch front-end process vents, continuous front-end process vents, and aggregate batch vent streams from condensers, distillation units, reactors, or other unit operations within an EPPU. Generally, process vents subject to NSPS subparts III, NNN, or RRR, or the HON and/or P&R I are grouped based on the flow rate, HAP concentration, and a TRE index value.[67] P&R II defines a process vent as a point of emission from a unit operation, such as condenser vents, vacuum pumps, steam ejectors and atmospheric vents from reactors and other process vessels; and no further stratification into groups for applicability is specified.

The results of our CAA section 112(d)(6) technology review for process vents associated with HON, P&R I, and P&R II processes are discussed in section III.C.3.a of this preamble. The results of our CAA 111(b)(1)(B) review for process vents subject to NSPS subparts III, NNN, or RRR are discussed in section III.C.3.b of this preamble.

a. HON, P&R I, and P&R II

As previously mentioned, the HON standards divide process vents into Group 1 process vents, which require controls, and Group 2 process vents, which generally do not require controls provided they remain below Group 1 thresholds. A Group 1 HON process vent is a process vent for which the vent stream flow rate is greater than or equal to 0.005 scmm, the total organic HAP concentration is greater than or equal to 50 ppmv, and the TRE index value is less than or equal to 1.0 (according to the determination procedures at 40 CFR 63.115). The TRE index value is a measure of the supplemental total resource requirement per unit VOC (or HAP) reduction. It takes into account all the resources which are expected to be used in VOC (or HAP) control by thermal oxidation and provides a dimensionless measure of resource burden based on cost effectiveness. Resources include supplemental natural gas, labor, and electricity. Additionally, if the off-gas contains halogenated compounds, resources will also include caustic and scrubbing and quench makeup water. For the HON and P&R I, the TRE index value is derived from the cost effectiveness associated with HAP control by a flare or thermal oxidation, and is a function of vent stream flowrate, vent stream net heating value, hourly emissions, and a set of coefficients. The TRE index value was first introduced in an EPA document titled: *Guideline Series for Control of Volatile Organic Compound (VOC) Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry (SOCMI)* (see EPA–450/3–84–015, December 1984). The EPA incorporated the TRE concept into the original HON (see 59 FR 19468, April 22, 1994) and the original P&R I rulemaking (see 61 FR 46906, September 5, 1996). The TRE index value is used in 40 CFR 63 subpart G and 40 CFR 63 subpart U as an alternative mode of compliance for process vent regulations. The TRE index value can also trigger monitoring, recordkeeping, and reporting requirements. In general, as previously mentioned for the HON and P&R I, continuous process vents with a TRE index value equal to or less than 1.0 are required to be controlled. For additional details regarding the TRE index value (including the equation and coefficients used to calculate the TRE index value for the HON and P&R I), see the document titled *Clean Air Act Section 112(d)(6) Technology Review for Continuous Process Vents Located in the SOCMI Source Category that are Associated with Processes Subject to HON, Continuous Front-end and Batch Front-end Process Vents Associated with Processes Subject to Group I Polymers and Resins NESHAP, and Process Vents Associated with Processes Subject to Group II Polymers and Resins NESHAP,* which is available in the docket for this rulemaking.

The HON standards require uncontrolled Group 1 process vents to reduce total organic HAP[68] emissions by 98 percent by weight by venting emissions through a closed vent system to any combination of control devices or by venting emissions through a closed

[66] P&R I and P&R II regulate process vents from both continuous and batch operations. The HON and NSPS subparts III, NNN, and RRR only regulate process vents if some, or all, of the gas stream originates as a continuous flow.

[67] TRE is discussed in more detail below in section III.C.3.a of this preamble (for NESHAP) and section III.C.3.b of this preamble (for NSPS).

[68] For HON, organic HAP refers to chemicals listed in Table 2 to NESHAP subpart F.

vent system to a flare.[69] The P&R I standards for continuous front-end process vents use the same Group 1 flow rate, HAP concentration, and TRE index value threshold criterion as the HON; refer to the same provisions in the HON for group determination (*i.e.,* owners and operators of continuous front-end process vents subject to P&R I determine whether control is required based on the flow rate, HAP concentration, and TRE index value using the same HON determination procedures at 40 CFR 63.115); and require the same level as control as the HON (*i.e.,* reduce total organic HAP[70] emissions by 98 percent by weight by venting emissions through a closed vent system to any combination of control devices or by venting emissions through a closed vent system to a flare).[71]

The P&R I standards do not refer to the HON for batch front-end process vents. The P&R I group determination for batch front-end vents is based on annual HAP emissions and annual average batch vent flow rate. Group 1 batch front-end process vent means a batch front-end process vent releasing annual organic HAP emissions greater than or equal to 11,800 kg/yr (26,014 lb/yr) and with a cutoff flow rate greater than or equal to the annual average batch vent flow rate.[72] The cutoff flow rate is calculated in accordance with 40 CFR 63.488(f). Annual organic HAP emissions and annual average batch vent flow rate are determined at the exit of the batch unit operation, as described in 40 CFR 63.488(a)(2). Annual organic HAP emissions are determined as specified in 40 CFR 63.488(b), and annual average batch vent flow rate is determined as specified in 40 CFR 63.488(e).

The P&R II standards for process vents do not specify any sort of stratification into groups. However, the rule does have different performance testing requirements depending on whether the process vent is part of a continuous process[73] or if flow of gaseous emissions is intermittent. As previously mentioned, process vents, storage tanks, and wastewater systems combined are regulated according to a production-based emission rate (*e.g.,* pounds HAP per million pounds BLR or WSR produced) standard for existing sources in both BLR (130 pounds) and WSR (10 pounds). For new sources, BLR requires 98 percent reduction or an overall limit of 5,000 pounds of HAP per year. New WSR sources are limited to 7 pounds of HAP per million pounds WSR produced.

As part of our technology review for HON and P&R I continuous process vents, we identified the following emission reduction options: (1) Remove the TRE concept in its entirety, remove the 50 ppmv and 0.005 scmm Group 1 process vent thresholds, and redefine a HON Group 1 process vent and P&R I Group 1 continuous front-end process vent (require control) as any process vent that emits greater than or equal to 1.0 lb/hr of total organic HAP; (2) the same requirements specified in option 1, but redefine a HON Group 1 process vent and P&R I Group 1 continuous front-end process vent (require control) as any process vent that emits greater than or equal to 0.10 lb/hr of total organic HAP; and (3) keep the TRE concept and keep the 50 ppmv and 0.005 scmm Group 1 process vent thresholds, but change the TRE index value threshold from 1.0 to 5.0. We did not identify any control options for P&R II process vents.

We identified options 1 and 2 as developments in practices, processes, and control technologies for multiple reasons. First, we identified at least one chemical manufacturing NESHAP (*i.e.,* ethylene production) that does not use the TRE index value as criteria for determining whether a process vent should be controlled. Second, based on the responses to our CAA section 114 request, we observed that some facilities are voluntarily controlling continuous process vents that are not required by the HON and P&R I to be controlled per the results of the TRE index value calculation. Of the 13 HON facilities that received the CAA section 114 request, at least three facilities confirmed they were voluntarily controlling some of their Group 2 process vents. We expect other HON and P&R I facilities will do this too because some facilities stated in their response to the CAA section 114 request that, pursuant to 40 CFR 63.113(h), many of their process vents are voluntarily designated as Group 1 process vents ''so that TRE calculations are not required.'' In other words, some facilities are likely electing to control certain process vents that have TRE index values greater than 1.0. Third, based on the responses to our CAA section 114 request, we observed that facilities are routing multiple continuous process vents to a single APCD. This is significant because the current use of the TRE index value is only based on controlling a single process vent with a single APCD, an unrealistic scenario when compared to how chemical manufacturing facilities actually control their process vents. It is much more likely that a facility routes numerous process vents to the same APCD. Finally, also based on responses to our CAA section 114 request, one facility provided over 300 pages of modeled runs that were used to help the facility determine certain characteristics of their continuous HON and P&R I process vents for inputs to TRE index value calculations. The facility had originally included these modeled runs with their Notification of Compliance Status report; we reviewed this information and concluded that determining a TRE index value for certain process vent streams is often theoretical, can be extremely complicated, and is uncertain. In addition, because the TRE index value is largely a theoretical characterization tool, it can be very difficult to enforce. In order to calculate a TRE index value, owners and operators must determine numerous input values; and without the correct amount of process knowledge, verifying inputs can be problematic.

We identified option 3 as a development in practices, processes, and control technologies because we determined that another chemical manufacturing NESHAP (*i.e.,* the MON) contains a TRE index value threshold criteria (*i.e.,* less than or equal to 1.9) that is more stringent than the HON and P&R I TRE index value threshold criteria (*i.e.,* less than or equal to 1.0). Additionally, we identified one particular state rule that uses a more stringent TRE index value threshold than the HON and P&R I TRE index value threshold criteria.[74] This state rule requires owners and operators of air oxidation processes to control any process vent stream or combination of process vent streams with a TRE index value less than or equal to 6.0.[75]

[69] See also, footnote 16, for halogenated vent streams that are Group 1.

[70] For P&R I, organic HAP refers to chemicals listed in Table 5 to NESHAP subpart U.

[71] See also, footnote 16, for halogenated vent streams that are Group 1.

[72] P&R I also contains standards for halogenated batch process vents.

[73] P&R II defines ''continuous process'' to mean a process where the inputs and outputs flow continuously throughout the duration of the process. Continuous processes are typically steady-state.

[74] See Illinois Title 35: Subtitle B: Chapter I: Subchapter C: Parts 218 and 219 (*i.e.,* Organic Material Emission Standards And Limitations For The Chicago Area Subpart V: Batch Operations And Air Oxidation Processes; and Organic Material Emission Standards And Limitations For The Metro East Area Subpart V: Batch Operations And Air Oxidation Processes).

[75] Although the TRE equation for Illinois Title 35: Subtitle B: Chapter I: Subchapter C: Parts 218 and 219 has a different set of TRE coefficients than that of the HON and P&R I, we examined multiple scenarios and determined that a process vent not required to be controlled by the HON or P&R I could still be required to be controlled by this Illinois rule. For example, a halogenated process

Continued

To evaluate impacts of all three of the options presented, we used information from about 50 Group 2 continuous process vents that was provided by 9 of the 13 HON facilities (including 1 P&R I facility collocated with a HON facility) that received the CAA section 114 request. Using vent stream flowrates, vent stream net heating values, and VOC and HAP emission rates (which we obtained from TRE index value calculations that facilities provided in their response to the CAA section 114 request) and the methodology from the sixth edition of the EPA Air Pollution Control Cost Manual,[76] we first calculated a cost effectiveness for installing ductwork and a blower on each vent, assuming each of these vents could be routed to an existing control device achieving 98 percent by weight emission reduction. Given that many of the Group 2 continuous process vents have a very low flow rate and/or emission rate, we found that even installing simple ductwork and a blower would not be cost effective for the majority of these vents. However, we did identify 23 of these Group 2 continuous process vents (a subset of the 50 Group 2 process vents from responses to our CAA section 114 request) for which we found this scenario to be cost effective (*i.e.,* $1,100 per ton of VOC/HAP or less). Using this subset of Group 2 continuous process vents, we extrapolated a set of distributions and parameters that we could apply to all 207 HON facilities and 19 P&R I facilities in order to evaluate impacts of all three of the options presented for continuous HON and P&R I process vents, noting that six of the 23 Group 2 continuous process vents are already voluntarily controlled even though the HON and P&R I do not require them to be. For Group 2 continuous process vents already voluntarily being controlled, we assumed owners and operators use existing APCDs. For Group 2 process vents not already being voluntarily controlled, we assumed owners and operators would need to install an APCD; therefore, we estimated costs to install a thermal oxidizer using the EPA's control cost template.[77] We estimated that 16 HON facilities operating 48 HON Group 2 process vents (32 of which are already voluntarily controlled and 16 that are not currently controlled) and 3 P&R I facilities operating 9 P&R I Group 2 continuous front-end process vents (in which all nine are not currently controlled) would be impacted by option 1 (*i.e.,* control process vents with a total organic HAP emission rate greater than 1.0 lb/hr). For option 2 (*i.e.,* control process vents with a total organic HAP emission rate greater than 0.10 lb/hr), we estimated that 48 HON facilities operating 287 HON Group 2 process vents (96 of which are already voluntarily controlled and 191 that are not currently controlled) and 3 P&R I facilities operating 30 P&R II Group 2 continuous front-end process vents (in which all 30 are not currently controlled) would be impacted. For option 3 (*i.e.,* control process vents with a TRE index value less than or equal to 5.0), we estimated that 16 HON facilities operating 64 HON Group 2 process vents (32 of which are already voluntarily controlled and 32 that are not currently controlled) and 3 P&R I facilities operating nine P&R II Group 2 continuous front-end process vents (in which all 9 are not currently controlled) would be impacted.

Table 14 of this preamble presents the nationwide impacts for the three options considered for continuous process vents at HON facilities. Table 15 of this preamble presents the nationwide impacts for the three options considered for continuous process vents at P&R I facilities. We determined that option 1 is cost effective and we are proposing, pursuant to CAA section 112(d)(6), to remove the TRE concept in its entirety from the HON and P&R I. We are also proposing, pursuant to CAA section 112(d)(6), to remove the 50 ppmv and 0.005 scmm Group 1 process vent thresholds from the HON Group 1 process vent definition and P&R I Group 1 continuous front-end process vent definition, and instead require owners and operators of HON or P&R I process vents that emit greater than or equal to 1.0 lb/hr of total organic HAP to reduce emissions of organic HAP using a flare meeting the proposed operating and monitoring requirements for flares (see section III.D.1 of this preamble); or reduce emissions of total organic HAP or TOC by 98 percent by weight or to an exit concentration of 20 ppmv, whichever is less stringent. We are not proposing to revise the HON and P&R I to reflect the requirements of process vent options 2 and 3 pursuant to CAA section 112(d)(6). We determined that process vent option 2 is not cost effective, and while we believe option 3 is cost effective, it would require keeping the TRE concept in the rule which for reasons explained above is not desired. We solicit comment on the proposed revisions for process vents for the HON and P&R I.

TABLE 14—NATIONWIDE EMISSIONS REDUCTIONS AND COST IMPACTS OF CONTROL OPTIONS CONSIDERED FOR CONTINUOUS PROCESS VENTS AT HON FACILITIES

Control option	Total capital investment ($)	Total annualized costs ($/yr)	VOC emission reductions (tpy)	HAP emission reductions (tpy)	HAP cost effectiveness ($/ton)
1	1,218,000	3,150,000	436	436	7,200
2	5,732,000	10,329,000	809	533	19,400
3	1,493,000	3,208,000	441	441	7,300

vent with a net heating value of 100 MJ/scm, a flowrate of 0.82 scm/min, a TOC mass flow rate of 9 kg/hr, and a HAP mass flow rate of 1 kg/hr would yield a TRE of 3.87 using the HON and/or the P&R I TRE equation (and 3.87 is above the HON and P&R I index value thresholds of 1.0 so no control would be required); however, this same stream would yield a TRE of 5.28 using the Illinois rule TRE equation (and 5.28 is below the Illinois rule TRE index value threshold of 6.0, so control is required).

[76] EPA, 2002. EPA Control Cost Manual, Sixth Edition. January 2002. Publication Number EPA/452/B–02–001.

[77] Refer to the file ''Incinerators and Oxidizers Calculation Spreadsheet (note: updated on 1/16/2018) (xlsm)'' which follows the methodology from the sixth edition of the EPA Air Pollution Control Cost Manual and can be found at the following website: *https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-reports-and-guidance-air-pollution.*

TABLE 15—NATIONWIDE EMISSIONS REDUCTIONS AND COST IMPACTS OF CONTROL OPTIONS CONSIDERED FOR CONTINUOUS PROCESS VENTS AT P&R I FACILITIES

Control option	Total capital investment ($)	Total annualized costs ($/yr)	VOC emission reductions (tpy)	HAP emission reductions (tpy)	HAP cost effectiveness ($/ton)
1	198,000	586,000	51.0	51.0	11,500
2	557,000	1,242,000	80.1	72.4	17,200
3	215,000	590,000	54.8	54.8	10,800

As part of our technology review for P&R I batch front-end process vents, we identified the following emission reduction option: revise the P&R I control threshold for batch front-end process vents from 26,014 lb/yr on an individual vent basis to 10,000 lb/yr on an aggregate vent basis. We identified this option as a development in practices, processes, and control technologies based on our comparison of the batch process vent requirements in the NESHAP for Chemical Manufacturing Area Sources (CMAS) compared to those in P&R I. We note that CMAS regulates batch process vents from nine area source categories in the chemical manufacturing sector. Owners and operators of a CMAS CMPU with collective uncontrolled organic HAP emissions greater than or equal to 10,000 lb/yr from all batch process vents associated with an affected CMPU must meet emission limits for organic HAP emissions. GACT for batch process vents is defined in the CMAS NESHAP as 85 percent control for existing batch process units (and 90 percent for new units) that have uncontrolled organic HAP emissions equal to or greater than 10,000 lb/yr. As mentioned in the CMAS NESHAP rulemaking,[78] this applicability threshold of 10,000 lb/yr per batch process was also used in the MON and provides indicia of the size of a CMPU because the MON applies to major sources of HAP. The EPA used information from the baseline facility MON database and determined that costs to meet an 85 percent control requirement for existing CMAS CMPUs with uncontrolled organic HAP emissions equal to or greater than 10,000 lb/yr were reasonable ($8,700/ton). We also note that, based on a response to our CAA section 114 request, a facility (the only facility that received the CAA section 114 request and is subject to P&R I) reported to the EPA that it is controlling its five batch front-end process vents even though P&R I does not require these vents to be controlled.[79]

To evaluate impacts of the option presented for P&R I batch front-end process vents, we used information from the batch process vent impacts analysis for the CMAS final rule.[80] We selected the 90 percent control option model plant shown in Table 3 of this impacts analysis for sources subject to P&R I (instead of the 85 percent control option model plant shown in Table 2 of the impacts analysis) to prevent backsliding of the current P&R I requirements which reflect MACT instead of the GACT standards of CMAS. We assumed that all facilities subject to P&R I have batch process vents that would require control under the option evaluated (*i.e.,* under the option to change the Group 1 batch front-end process vent threshold to 10,000 lb/yr on an aggregate vent basis), but as previously mentioned, one facility is already voluntarily controlling their batch front-end process vents. As a result, we estimated impacts to the remaining 18 facilities subject to P&R I.

Table 16 of this preamble presents the nationwide impacts for the option considered for batch front-end process vents at P&R I facilities. We determined that this option is cost effective and we are proposing, pursuant to CAA section 112(d)(6), to remove the annual organic HAP emissions mass flow rate, cutoff flow rate, and annual average batch vent flow rate Group 1 process vent thresholds from the Group 1 batch front-end process vent definition in P&R I at 40 CFR 63.482 (these thresholds are currently determined on an individual batch process vent basis). Instead, owners and operators of batch front-end process vents that release a total of annual organic HAP emissions greater than or equal to 4,536 kg/yr (10,000 lb/yr) from all batch front-end process vents combined would be required to reduce emissions of organic HAP from these process vents using a flare meeting the proposed operating and monitoring requirements for flares (see section III.D.1 of this preamble); or reduce emissions of organic HAP or TOC by 90 percent by weight (or to an exit concentration of 20 ppmv if considered an ''aggregate batch vent stream'' as defined by the rule). We solicit comment on the proposed revisions for batch process vents for P&R I.

TABLE 16—NATIONWIDE EMISSIONS REDUCTIONS AND COST IMPACTS OF CONTROL OPTIONS CONSIDERED FOR BATCH FRONT-END PROCESS VENTS AT P&R I FACILITIES

Control option	Total capital investment ($)	Total annualized costs ($/yr)	VOC emission reductions (tpy)	HAP emission reductions (tpy)	HAP cost effectiveness ($/ton)
1	811,000	650,700	105	105	6,200

We did not identify any developments in practices, processes, or control technologies for P&R II process vents that would achieve a greater HAP emission reduction beyond the emission reduction already required by P&R II. Therefore, we are not proposing any changes to P&R II for this emission

[78] See 74 FR 56008, October 29, 2009.

[79] As previously mentioned, the P&R I control threshold for batch front-end process vents is on an individual vent basis; and each of the batch front-end process vents at this facility releases annual organic HAP emissions less than 11,800 kg/yr (26,014 lb/yr) which is below the control threshold of P&R I.

[80] RTI, 2009. Revised Impacts Analysis for Batch Process Vents Chemical Manufacturing Area Source NESHAP. October 14, 2009. EPA Docket No. EPA–HQ–OAR–2008–0334–0075.

process group based on our technology review.

For further details on all of our assumptions and methodologies we used in these analyses, see the document titled *Clean Air Act Section 112(d)(6) Technology Review for Continuous Process Vents Located in the SOCMI Source Category that are Associated with Processes Subject to HON, Continuous Front-end and Batch Front-end Process Vents Associated with Processes Subject to Group I Polymers and Resins NESHAP, and Process Vents Associated with Processes Subject to Group II Polymers and Resins NESHAP,* which is available in the docket for this rulemaking.

b. NSPS Subparts III, NNN, and RRR

As previously mentioned, this action presents the EPA's review of the requirements of 40 CFR part 60, subparts III, NNN, and RRR pursuant to CAA section 111(b)(1)(B). As described in section II.G.2 of this preamble, the statutory review of these NSPS focused on whether there are any emission reduction techniques that are used in practice that achieve greater emission reductions than those currently required by these NSPS and whether any of these developments in practices have become the BSER. Based on this review, we have determined that the BSER for reducing VOC emissions from these SOCMI processes remain combustion, and the current standards of 98 percent reduction of TOC (minus methane and ethane) or reduction of TOC (minus methane and ethane) to an outlet concentration of 20 ppmv on a dry basis corrected to 3 percent oxygen, or use of a flare as an APCD continue to reflect the BSER. However, we are proposing to remove the alternative of maintaining a TRE index value greater than 1 without the use of control device. In addition, we are proposing additional requirements to provide greater assurance of compliance with the standards. We are also proposing standards that would apply during startup, shutdown, maintenance, or inspection of any of the air oxidation units, distillation operations, and reactor processes affected facilities under the applicable NSPS where the affected facility is emptied, depressurized, degassed, or placed into service. The rationales for each of these proposed actions are presented in more detail below. Pursuant to CAA section 111(a), the proposed NSPS included in this action would apply to facilities that begin construction, reconstruction, or modification after April 25, 2023 (see section III.F.2 of this preamble).

NSPS subparts III, NNN, and RRR regulate vent streams [81] from: SOCMI air oxidation units for which construction, reconstruction, or modification commenced after October 21, 1983 that use air (or a combination of air and oxygen) as an oxidizing agent to produce one or more of the chemicals listed in 40 CFR 60.617; SOCMI distillation operations for which construction, reconstruction, or modification commenced after December 30, 1983 which produce any of the chemicals listed in 40 CFR 60.667 as a product; and SOCMI reactor processes for which construction, reconstruction, or modification commenced after June 29, 1990 which operate as part of a process unit which produces any of the chemicals listed in 40 CFR 60.707 as a product. The SOCMI NSPS subparts III, NNN, and RRR regulate VOC emissions in the form of TOC. In promulgating these rules, the EPA determined that, for sources with a TRE index value equal to or less than 1.0, the BSER is the use of thermal incineration or flare achieving 98 percent by weight control efficiency or a concentration of 20 ppmv on a dry basis corrected to 3 percent oxygen. At the time of promulgation, the EPA stated that any control technology can be used to meet BSER as long as it can be demonstrated that the selected control technology is at least as effective as BSER at reducing VOC emissions. For affected facilities with a TRE index value greater than 1.0, BSER is no control and sources are required to maintain a TRE index value greater than 1.0. As previously mentioned, the TRE index value is a measure of the supplemental total resource requirement per unit VOC (or HAP for NESHAP) reduction (see section III.C.3.a of this preamble). It takes into account all the resources which are expected to be used in VOC (or HAP) control by thermal oxidation and provides a dimensionless measure of resource burden based on cost effectiveness. Resources include supplemental natural gas, labor, and electricity. Additionally, if the off-gas contains halogenated compounds, resources will also include caustic and scrubbing and quench makeup water. For the SOCMI NSPS subparts III, NNN, and RRR, the TRE index value is derived from the cost effectiveness associated with VOC control thermal oxidation, and is a function of vent stream flowrate, vent stream net heating value, hourly emissions, and a set of coefficients. The TRE index value was first introduced in an EPA document titled: *Guideline Series for Control of Volatile Organic Compound (VOC) Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry (SOCMI)* (see EPA–450/3–84–015, December 1984). In general, similar to the HON and P&R I, process vents with a TRE index value equal to or less than 1.0 are required to be controlled under SOCMI NSPS III, NNN and RRR. For additional details regarding the TRE index value (including the equation and coefficients used to calculate the TRE index value for the SOCMI NSPS subparts III, NNN, and RRR), see the document titled *CAA 111(b)(1)(B) review for the SOCMI air oxidation unit processes, distillation operations, and reactor processes NSPS subparts III, NNN, and RRR,* which is available in the docket for this rulemaking.

We reviewed the RACT/BACT/LAER clearinghouse database, other subsequent EPA, state, and local regulatory development efforts related to process vents, and responses to our CAA section 114 request for advances in process operations, design or efficiency improvements, or other systems of emission reduction.

While we find no change in the BSER for reducing VOC emissions from air oxidation units, distillation operations, and reactor processes, we are proposing certain revisions to the current standards. First, we are proposing to remove the option of maintaining a TRE index value greater than 1 as an alternative to controlling emissions. We are proposing this change based on the following observations we made with respect to the NSPS TRE index. We observed that some facilities subject to NSPS subpart III, NNN, and/or RRR are voluntarily controlling process vents even though such control is not required under the applicable NSPS because their calculated NSPS TRE index value is greater than 1. At least three HON facilities that are also subject to at least one of the three process vent NSPS confirmed in response to our CAA section 114 request, that they were voluntarily controlling some of their Group 2 process vents even though control is not required under either the HON or the applicable NSPS. We expect

[81] Vent stream means: any gas stream, containing nitrogen which was introduced as air to the air oxidation reactor, released to the atmosphere directly from any air oxidation reactor recovery train or indirectly, after diversion through other process equipment (for NSPS subpart III); any gas stream discharged directly from a distillation facility to the atmosphere or indirectly to the atmosphere after diversion through other process equipment (for NSPS subpart NNN); and any gas stream discharged directly from a reactor process to the atmosphere or indirectly to the atmosphere after diversion through other process equipment (for NSPS subpart RRR). In all cases, the vent stream excludes relief valve discharges and equipment leaks.

other facilities that are subject to the HON and at least one of the NSPS subparts III, NNN, and RRR will do this too because some facilities stated in their response to the CAA section 114 request that, pursuant to 40 CFR 63.113(h), many of their process vents are voluntarily designated as HON Group 1 process vents ''so that TRE calculations are not required.'' In other words, some facilities are likely electing to control certain process vents that have TRE index values greater than 1.0. In addition, based on the responses to our CAA section 114 request, we observed that facilities are routing multiple process vents to a single APCD. This is significant because the current use of the TRE index value is only based on controlling a single process vent with a single APCD, an unrealistic scenario when compared to how chemical manufacturing facilities actually control their process vents. It is much more likely that a facility routes numerous process vents to the same APCD. For the reason stated above, we no longer believe that TRE index value accurately represents the BSER, and because a single APCD can control emissions from multiple process vents, control could be cost-effective even at a TRE index value of greater than 1. Finally, also based on responses to our CAA section 114 request, one HON and P&R I facility (that is also subject to all three process vent NSPS) provided over 300 pages of modeled runs that were used to help the facility determine certain characteristics of their process vents for inputs to HON and P&R I TRE index value calculations. We reviewed this information and concluded that determining a TRE index value for certain process vent streams is often theoretical, can be extremely complicated, and is uncertain. In addition, because the TRE index value is largely a theoretical characterization tool, it can be very difficult to enforce. In order to calculate a TRE index value, owners and operators must determine numerous input values; and without the correct amount of process knowledge, verifying inputs can be problematic. We evaluated the cost of requiring that a facility control all process vents irrespective of its TRE index value and the average cost per facility is provided in Table 17 of this preamble. In addition, given the complexity of chemical manufacturing facilities and their use of APCDs (*e.g.,* integrated with numerous emission sources subject to various chemical manufacturing related NSPS and NESHAP), we found the cost to be cost effective based on the cost-effectiveness we evaluated for four different NSPS triggering scenarios described further below (see Table 18 of this preamble). For the reasons stated above, we believe that proposing to remove the option to maintain a greater than 1 TRE index value as an alternative to emission reduction under NSPS subparts IIIa, NNNa, and RRRa make practical and enforceable sense. In other words, for NSPS subparts IIIa, NNNa, and RRRa, we are proposing owners and operators reduce emissions of total organic carbon (TOC) (minus methane and ethane) from all vent streams of an affected facility (*i.e.,* SOCMI air oxidation unit processes, distillation operations, reactor processes for which construction, reconstruction, or modification after April 25, 2023 by 98 percent by weight or to a concentration of 20 ppmv on a dry basis corrected to 3 percent oxygen, whichever is less stringent, or combust the emissions in a flare meeting more stringent operating and monitoring requirements for flares (we discuss these flare requirements further below in this section) (see proposed 40 CFR 612a(a), 40 CFR 60.662a(a), and 40 CFR 60.702a(a)).

We are also proposing to tighten up the requirements for flares. All three NSPS subparts allow the use of a flare in accordance with the flare general provisions at 40 CFR 60.18 as an alternative to meeting the numeric standards. The EPA had previously believed flares could achieve 98 percent emission reduction if it were operated in accordance with 40 CFR 60.18. See, *e.g.,* 55 FR 26913. Because the NSPS reflect the BSER under conditions of proper operation and maintenance, in doing its review, we also evaluate and determine the proper testing, monitoring, recordkeeping and reporting requirements needed to ensure compliance with the emission standards. In doing so, in our review of several chemical and petrochemical sector related NESHAP, such as MON, the EMACT standards, and Petroleum Refineries NESHAP, we identified new operating and monitoring requirements for flares that are different than those specified in 40 CFR 60.18.[82] The EPA included these flare requirements in recent RTR rulemakings in order to ensure flares used as APCDs achieve 98 percent HAP destruction efficiencies and these flare requirements are also being proposed for HON and P&R I (this is discussed in detail in section III.D.1 of this preamble). We evaluated the costs of these improved flared requirements and the average cost per facility is provided in Table 17 of this preamble. In addition, given the complexity of chemical manufacturing facilities and their use of APCDs (*e.g.,* integrated with numerous emission sources subject to various chemical manufacturing related NSPS and NESHAP), we found the cost to be cost effective based on the cost-effectiveness we evaluated for four different NSPS triggering scenarios described further below (see Table 18 of this preamble). In light of the above, we are proposing to include in the new NSPS subparts the same operating and monitoring requirements for flares that we are proposing for flares subject to the HON and P&R I (see proposed 40 CFR 619a, 40 CFR 60.669a, and 40 CFR 60.709a).

Third, we are proposing to amend the definition of vent streams such that the emission standards would also apply to PRD emissions. Currently, the NSPS subparts III, NNN, and RRR exclude ''relief valve discharges'' from the definition of vent stream (see 40 CFR 60.611, 40 CFR 60.661, and 40 CFR 60.701) and therefore, emissions from PRDs[83] are currently excluded from emissions standards in these NSPS. However, the preambles to the proposed and final subparts were silent on the reason for this exclusion in the definition of a ''vent stream.'' Further, in reviewing the RACT/BACT/LAER clearinghouse database, we identified at least one SOCMI facility that has requirements for reactor process vents such that no PRD may emit directly to the atmosphere under any circumstance, and the capture system must be inspected regularly to verify integrity. In light of the above, we are proposing to the ''vent stream'' definition to remove the exclusion of ''relief valve discharge.''

Fourth, we are proposing to expressly prohibit emissions from affected facilities bypassing an APCD at any time. In our review of several chemical and petrochemical sector related NESHAP, none of the rules allow regulated emissions from a process vent to bypass an APCD at any time, and if a bypass is used, it is considered a

[82] In general the differences include: new requirements to operate pilot flame systems continuously and that flares operate with no visible emissions (except for periods not to exceed a total of 5 minutes during any 2 consecutive hours) when the flare vent gas flow rate is below the smokeless capacity of the flare; new requirements related to flare tip velocity and the combustion zone gas; and new work practice standards related to the visible emissions and velocity limits during periods when the flare is operated above its smokeless capacity (*e.g.,* periods of emergency flaring). For the specific flare requirements, refer to: 40 CFR 63.1103(e)(4) (EMACT standards), 40 CFR 63.2450(e)(5) (MON), and 40 CFR 63.670 and 40 CFR 63.671 (Petroleum Refinery Sector rule).

[83] The acronym ''PRD'' means pressure relief device and is common vernacular to describe a variety of devices regulated as relief valve discharges.

violation and the owner or operator is required to estimate and report the quantity of regulated emissions released.[84] The EPA included these requirements for bypasses in recent RTR rulemakings because bypassing an APCD could result in a release of regulated emissions from a process vent into the atmosphere.[85] Currently, the NSPS subparts III and NNN do not contain any requirements for bypass lines, and NSPS subpart RRR only requires owners and operators to document when a vent stream being routed to an APCD is diverted through a bypass line resulting in emissions to the atmosphere; therefore, it is unclear whether the current standards prohibit bypassing an APCD, which could result in a release of otherwise regulated emissions from a process vent into the atmosphere. We are therefore proposing in NSPS subparts IIIa, NNNa, and RRRa that an owner or operator may not bypass the APCD at any time, that a bypass is a violation (see proposed 40 CFR 60.612a(b)(2), 40 CFR 60.662a(b)(2), and 40 CFR 60.702a(b)(2)), and that owners and operators must estimate and report the quantity of TOC released should any such violation occur (see proposed 40 CFR 60.615a(d)(1) and (2), 40 CFR 60.665a(d)(1) and (2), and 40 CFR 60.705a(d)(1) and (2)).

Also, we are proposing in the new NSPS subparts additional control device requirements for adsorbers when such APCD is used to meet the emission standards in the applicable NSPS. In our review of the MON, we identified requirements for adsorbers that cannot be regenerated and regenerative adsorbers that are regenerated offsite (see 40 CFR 63.2450(e)(7)). The MON requires owners and operators of this type of APCD to use dual adsorbent beds in series and conduct daily monitoring because the use of a single bed does not ensure continuous compliance unless the bed is replaced well before breakthrough.[86] The EPA included these requirements in their recent RTR rulemaking for MON in order to ensure owners and operators monitor for performance deterioration for these specific types of APCDs and these requirements are also being proposed for HON and P&R I (see section III.E.5.b of this section for additional information about this). Currently, the NSPS subparts III, NNN, and RRR do not contain any requirements for adsorbers that cannot be regenerated and regenerative adsorbers that are regenerated offsite. We evaluated the cost of these requirements for adsorbers and the average cost per facility is provided in Table 17 of this preamble. In addition, given the complexity of chemical manufacturing facilities and their use of APCDs (*e.g.,* integrated with numerous emission sources subject to various chemical manufacturing related NSPS and NESHAP), we found the cost to be cost effective based on the cost-effectiveness we evaluated for four different NSPS triggering scenarios described further below (see Table 18 of this preamble); therefore, in order to ensure that continuous compliance is achieved for NSPS subpart IIIa, NNNa, and RRRa facilities at all times when controlling VOC emissions (*i.e.,* for those facilities that choose to use adsorbers that cannot be regenerated and regenerative adsorbers that are regenerated offsite as BSER to meet the 98-percent control or a 20 ppmv TOC outlet concentration emission standard), we are proposing to include at 40 CFR 60.613a(a)(6), 40 CFR 60.663a(a)(6), and 40 CFR 60.703a(a)(6) the same monitoring requirements for adsorbers that cannot be regenerated and regenerative adsorbers that are regenerated offsite that we are proposing for the HON and P&R I.

Lastly, consistent with *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008),[87] we are proposing standards for periods of startup and shutdown, which are currently not subject to the emission standards in NSPS subparts III, NNN and RRR. For this effort, we identified, as part of our review of the RACT/BACT/LAER clearinghouse database, some SOCMI facilities in Texas that have specific requirements related to maintenance, startup, and shutdown for equipment and vessel openings related to process vents (*i.e.,* opening air oxidation unit processes, distillation operations, and reactor processes) and we found that these requirements are included in several SOCMI related NESHAP (*i.e.,* EMACT standards, the MON, and/or the petroleum refineries NESHAP) (we discuss these requirements further below in this section of the preamble). Given that many SOCMI processes that are subject to the SOCMI NSPS are also located at chemical plants subject to these related NESHAP and these facilities use the same APCDs to comply with all of these rules (to reduce both VOC and HAP emissions), we also examined the process vent provisions from each of these rules. Review of the NESHAP standards mentioned above revealed several related requirements that did not exist at the time the EPA promogulated NSPS subparts III, NNN, and RRR.

As previously mentioned in our review of the RACT/BACT/LAER clearinghouse database and as found in our review of in several chemical and petrochemical sector related NESHAP,[88] the EPA has included a work practice standard for maintenance vents requiring owners and operators to meet certain conditions before they open equipment to the atmosphere, including opening equipment to the atmosphere that are related to NSPS process vents (*e.g.,* air oxidation units, distillation operations, and reactor processes). This work practice standard requires that, prior to opening process equipment to the atmosphere, the equipment must either: (1) Be drained and purged to a closed system so that the hydrocarbon content is less than or equal to 10 percent of the LEL; (2) be opened and vented to the atmosphere only if the 10-percent LEL cannot be demonstrated and the pressure is less than or equal to 5 psig, provided there is no active purging of the equipment to the atmosphere until the LEL criterion is met; (3) be opened when there is less than 50 pounds of VOC that may be emitted to the atmosphere; or (4) for installing or removing an equipment blind, depressurize the equipment to 2 psig or less and maintain pressure of the equipment where purge gas enters the equipment at or below 2 psig during the blind flange installation, provided none of the other proposed work practice standards can be met.[89] We evaluated the cost associated with this work practice standard and the average cost per facility is provided in Table 17 of this preamble. In addition, given the complexity of chemical manufacturing facilities and their use of APCDs (*e.g.,* integrated with numerous emission

[84] See 40 CFR 63.1103(e)(6), 40 CFR 63.1109(g), and 40 CFR 63.1110(e)(6) (EMACT standards); 40 CFR 63.2450(e)(6), 40 CFR 63.2520(e)(12), and 40 CFR 63.2525(n) (MON); and 40 CFR 63.644(c), 40 CFR 63.660(i)(2), and 40 CFR 63.655(g)(6)(iii) and (i)(4) (Petroleum Refinery Sector rule).

[85] See 85 FR 40386, July 6, 2020 (EMACT standards), 85 FR 49084, August 12, 2020 (MON), and 80 FR 75178, December 1, 2015 (Petroleum Refinery Sector rule).

[86] According to the MON, ''breakthrough'' means the time when the level of HAP or TOC, measured at the outlet of the first bed, has been detected is at the highest concentration allowed to be discharged from the adsorber system and indicates that the adsorber bed should be replaced.

[87] In *Sierra Club,* the court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1). The court explained that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that an SSM exemption violates this requirement. The EPA believes the reasoning in *Sierra Club* applies equally to section 111 standards.

[88] See 40 CFR 63.1103(e)(5) (EMACT standards), 40 CFR 63.2450(v) (MON), and 40 CFR 63.642(c) (Petroleum Refinery Sector rule).

[89] The EPA added these equipment opening requirements in the recent RTR to be consistent with *Sierra Club.*

sources subject to various chemical manufacturing related NSPS and NESHAP), we found the cost to be cost effective based on the cost-effectiveness we evaluated for four different NSPS triggering scenarios described further below (see Table 18 of this preamble). We determined that these work practice standards for maintenance vents (*i.e.,* equipment openings related to process vents) is a technique used in practice that achieves emission reductions during startup, shutdown, maintenance, or inspection of any of the air oxidation units, distillation operations, and reactor processes affected facilities under the applicable NSPS where the affected facility is emptied, depressurized, degassed, or placed into service. CAA section 111(h)(1) authorizes the Administrator to promulgate ''a design, equipment, work practice, or operational standard, or combination thereof'' if in his or her judgment, ''it is not feasible to prescribe or enforce a standard of performance.'' Equipment openings related to process vents are not ''emitted through a conveyance designed and constructed to emit or capture such pollutant'' (see CAA section 111(h)(2)) and it is not possible to characterize each of these potential release points. For these reasons (which are the same reasons we discuss in section III.D.4.a of this preamble for including a work practice standard for maintenance activities in the HON and P&R I), we are proposing these work practice standards for maintenance vents in NSPS subparts IIIa, NNNa, and RRRa as the standards reflecting the BSER during periods of startup and shutdown (see proposed 40 CFR 612a(c), 40 CFR 60.662a(c), and 40 CFR 60.702a(c)).

As mentioned above, we analyzed cost and emission reductions as part of our evaluation of each of the options considered above. We used the average cost and emission reductions that we determined for process vents subject to the HON to evaluate the costs, emission reductions, and cost-effectiveness of each of the options considered above for NSPS subparts IIIa, NNNa, and RRRa. Table 17 of this preamble summarizes these average HON cost and emission reductions.

TABLE 17—AVERAGE COST AND EMISSION REDUCTIONS FOR PROCESS VENTS SUBJECT TO THE HON USED FOR THE SUITE OF PROPOSED PROCESS VENT REQUIREMENTS EVALUATED FOR THE NSPS SUBPARTS IIIa, NNNa, AND RRRa

Description	Total capital investment ($)	Total annual cost ($/yr)	Total annual cost w/recovery credits ($/yr)	VOC emission reductions (tpy)
Flare monitoring requirements [1]	3,752,200	789,200	789,200	93
Maintenance vent requirements [2]	.....	460	460	.....
Revising the standard from a TRE calculation to control of all vent streams [3]	39,300	98,400	98,400	9.1
Adsorber monitoring (carbon cannisters) [4]	26,500	2,500	2,500	0.21

[1] For additional details, see the document titled *Control Option Impacts for Flares Located in the SOCMI Source Category that Control Emissions from Processes Subject to HON and for Flares that Control Emissions from Processes Subject to Group I and Group II Polymers and Resins NESHAPs,* which is available in the docket for this rulemaking.

[2] For additional details, see the document titled *Review of Regulatory Alternatives for Certain Vent Streams in the SOCMI Source Category that are Associated with Processes Subject to HON and Processes Subject to Group I and Group II Polymers and Resins NESHAPs,* which is available in the docket for this rulemaking.

[3] For additional details, see the document titled *Clean Air Act Section 112(d)(6) Technology Review for Continuous Process Vents Located in the SOCMI Source Category that are Associated with Processes Subject to HON, Continuous Front-end and Batch Front-end Process Vents Associated with Processes Subject to Group I Polymers and Resins NESHAP, and Process Vents Associated with Processes Subject to Group II Polymers and Resins NESHAP,* which is available in the docket for this rulemaking.

[4] For additional details, see the document titled *Analysis of Monitoring Costs and Dual Bed Costs for Non-Regenerative Carbon Adsorbers Used in the SOCMI Source Category that are Associated with Processes Subject to HON and for Non-Regenerative Carbon Adsorbers that are Associated with Processes Subject to Group I Polymers and Resins NESHAP,* which is available in the docket for this rulemaking.

We also evaluated the costs of requiring the suite of proposed requirements described above to SOCMI nationwide. We conducted an analysis to estimate how many non-HON NSPS affected facilities are expected/projected to be subject to the suite of proposed process vent requirements presented above. Given that we are proposing these same suite of process vent requirements for HON facilities, we only considered non-HON NSPS affected facilities here under CAA section 111 so as to not double count cost and emission reductions from affected facilities that are subject to both these SOCMI NSPS and the HON. An affected facility can become subject to SOCMI NSPS subpart IIIa, NNNa, or RRRa under one of the following scenarios: (1) The affected facility is at a new greenfield facility; (2) the affected facility is a new affected facility at an existing plant site; (3) an existing affected facility is modified; or (4) an existing affected facility triggers the reconstruction requirements. For scenario 1 (*i.e.,* affected facility is at a new greenfield facility), we assumed only one non-HON greenfield facility will trigger NSPS subpart IIIa, NNNa, or RRRa over the next 5 years (we do not expect any non-HON greenfield facilities, but to be comprehensive in our analysis, we assumed one). For comprehensiveness, we also assumed this greenfield facility would not be subject to the EMACT standards, MON, and Petroleum Refinery Sector rule; and the facility will use one flare and one non-flare APCD to control all their process vents from SOCMI NSPS unit operations. We used facility responses to our CAA section 114 request to help us determine the number of facilities that could potentially trigger scenarios 2, 3, and 4.

For scenario 2 (*i.e.,* new affected facilities constructed at existing plant sites), we estimate six new affected facilities will be built and be subject to new requirements in a new NSPS subpart IIIa, NNNa, or RRRa over the next 5 years. Facilities responding to our CAA section 114 request had 500 unit operations subject to either NSPS subpart III, NNN, or RRR; and only one of these unit operations was new construction in the last 5 years and not subject to the HON. We determined that there are currently 284 SOCMI facilities subject to either NSPS subpart III, NNN, or RRR; and 196 of these are non-HON-subject facilities.[90] Based on responses

[90] As of March 2022, according to the OECA's ECHO tool, there were 284 facilities located in the United States that are potentially subject to at least

Continued

to our CAA section 114 request, HON facilities have on average 45 unit operations per facility. Assuming non-HON facilities are smaller, we estimate that non-HON facilities subject to either NSPS subpart III, NNN, or RRR have 15 unit operations per facility. Assuming the same distribution of new construction for non-HON facilities, we estimate that six new affected facilities (one new unit operation per non-HON facility subject to either NSPS subpart III, NNN, or RRR), would have been constructed in the last 5 years (1/500*15*196). This analysis assumes that the same number of unit operations that were constructed in the last 5 years would be constructed in the next 5 years. We then assumed two of the six new affected facilities (or about 33 percent) are collocated at a petroleum refinery, MON, and/or EMACT facility. Therefore, two of the six unit operations would already be complying with requirements in the NSPS (because of the NESHAP); and we also assumed that of the remaining four new unit operations, two will not use a flare to comply with the NSPS.

For Scenarios 3 and 4 (*i.e.,* existing facility is modified or reconstructed), we estimate 12 existing affected facilities will trigger new requirements in a new NSPS subpart IIIa, NNNa, or RRRa over the next 5 years due to modification or reconstruction. As mentioned previously, facilities responding to our CAA section 114 request had 500 unit operations subject to either III, NNN, or RRR; however, only two of these unit operations were modified or reconstructed in the last 5 years and not subject to the HON. Using similar procedure as described above for scenario 2, we estimate that 12 modified or reconstructed affected facilities (one modified or reconstructed unit operation per non-HON facility subject to the NSPS), would have been modified or reconstructed in the last 5 years (2/500*15*196). This analysis assumes that the same number of unit operations that were modified or reconstructed in the last 5 years would be modified or reconstructed in the next 5 years. We then assumed four of the 12 (or about 33 percent) modified or reconstructed affected facilities are collocated at a refinery, MON, and/or EMACT facility. Therefore, four of the 12 unit operations are already complying with requirements in the NSPS (because of the NESHAP); and we also, assumed that of the remaining eight modified or reconstructed unit operations, four will not use a flare to comply with the NSPS.

Table 18 of this preamble below presents the nationwide impacts for the suite of proposed process vent requirements presented above that we considered for vent streams subject to new NSPS subparts IIIa, NNNa, and RRRa. The cost-effectiveness for the suite of process vent requirements evaluated under this NSPS review is $4,570 per ton VOC (cost-effectiveness w/recovery credits), which we consider to be cost effective. See the document titled *CAA 111(b)(1)(B) review for the SOCMI air oxidation unit processes, distillation operations, and reactor processes NSPS subparts III, NNN, and RRR,* which is available in the docket for this rulemaking, for details on the assumptions and methodologies used in this analysis.

For the reasons stated above, pursuant to CAA section 111(b)(1)(B), we are proposing new SOCMI NSPS to: (1) Remove the TRE index value concept in its entirety and require all process vents from an affected facility be controlled; (2) eliminate the relief valve discharge exemption from the definition of ''vent stream'' such that any relief valve discharge to the atmosphere of a vent stream is a violation of the emissions standard; (3) prohibit an owner or operator from bypassing the APCD at any time, and to report any such violation (including the quantity of TOC released to the atmosphere); (4) require that flares used to reduce emissions comply with the same flare operating and monitoring requirements as those we have promulgated for flares used in SOCMI-related NESHAP; (5) require work practice standards for maintenance vents during startup, shutdown, maintenance, or inspection of any of the air oxidation units, distillation operations, and reactor processes affected facilities under the applicable NSPS where the affected facility is emptied, depressurized, degassed, or placed into service; and (6) add control device operational and monitoring requirements for adsorbers that cannot be regenerated and regenerative adsorbers that are regenerated offsite (see section III.E.5.b of this preamble). We are proposing that affected facilities that are constructed, reconstructed, or modified after April 25, 2023 would be subject to these proposed requirements in NSPS subparts IIIa, NNNa, and/or RRRa.

TABLE 18—NATIONWIDE EMISSIONS REDUCTIONS AND COST IMPACTS OF CONTROL OPTIONS CONSIDERED FOR NON-HON VENT STREAMS TRIGGERING NSPS SUBPARTS IIIa, NNNa, AND/OR RRRa

Scenario	Total capital investment ($)	Total annual cost ($/yr)	Total annual cost w/recovery credits ($/yr)	VOC emission reductions (tpy)	Cost-effectiveness w/recovery credits ($/ton VOC)
Scenario 1 (*i.e.,* one affected facility at a new greenfield facility)	1,665,300	461,000	461,000	93	4,960
Scenario 2 (*i.e.,* new affected facility at six existing facilities)	7,609,500	1,780,000	1,780,000	392	4,540
Scenarios 3 and 4 (*i.e.,* 12 existing affected facilities modified or triggers the reconstruction requirements)	15,192,500	3,558,000	3,558,000	783	4,540
Total	24,467,300	5,799,800	5,799,800	1,269	4,570

4. Standards for Transfer Racks

We did not identify any developments in practices, processes, or control technologies for HON transfer racks that would achieve a greater HAP emission reduction beyond the emission reduction already required by the HON. Therefore, under CAA section 112(d)(6) we are not proposing any changes to the

one of the process vent NSPS subparts III, NNN, and/or RRR. The list of facilities is available in the document titled *Lists of Facilities Subject to the HON, Group I and Group II Polymers and Resins NESHAPs, and NSPS subparts VV, VVa, III, NNN, and RRR,* which is available in the docket for this rulemaking.

HON for this emission process group based on our technology review.[91] We note, however, that under CAA section 112(d)(2) and (3) we are proposing changes to the applicability threshold for HON transfer racks to fill a regulatory gap in the current HON (see section III.D.8 of this preamble).

5. Standards for Wastewater

As previously mentioned, HAP are emitted into the air from wastewater collection, storage, and treatment systems that are uncovered or open to the atmosphere through volatilization of organic compounds at the liquid surface. Emissions occur by diffusive or convective means, or both. Diffusion occurs when organic concentrations at the water surface are much higher than ambient concentrations. The organics volatilize, or diffuse into the air, to reach equilibrium between aqueous and vapor phases. Convection occurs when air flows over the water surface, sweeping organic vapors from the water surface into the air. The rate of volatilization is related directly to the speed of the air flow over the water surface.

The HON defines wastewater to mean water that: (1) Contains either: (i) an annual average concentration of Table 9 (to NESHAP subpart G) compounds of at least 5 ppmw and has an annual average flow rate of 0.02 liter per minute (lpm) or greater or (ii) an annual average concentration of Table 9 (to NESHAP subpart G) compounds of at least 10,000 ppmw at any flow rate, and that (2) is discarded from a CMPU that meets all of the criteria specified in 40 CFR 63.100 (b)(1) through (3). Wastewater is process wastewater or maintenance wastewater. For process and maintenance wastewaters and certain liquid streams in open systems within a CMPU, the HON defines Group 1 wastewater streams at existing sources as having: either a total annual average concentration of Table 9 (to NESHAP subpart G) compounds greater than or equal to 10,000 ppmw at any flow rate; or a total annual average concentration of compounds in Table 9 to NESHAP subpart G greater than or equal to 1,000 ppmw, and the annual average flow rate is greater than or equal to 10 liter per minute. NESHAP subpart G provides owners and operators several control options for wastewater tanks, surface impoundments, containers, individual drain systems, and oil-water separators. NESHAP subpart G also specifies performance standards for treating wastewater streams using open or closed biological treatment systems or using a design steam stripper with vent control. For APCDs (*e.g.,* thermal oxidizers) used to control emissions from collection system components, steam strippers, or closed biological treatment, NESHAP subpart G provides owners or operators several compliance options, including 95-percent destruction efficiency, a 20 ppmv outlet concentration, or design specifications for temperature and residence time.

P&R I defines wastewater similarly to how the term is defined in the HON, except instead of referring to Table 9 (to NESHAP subpart G) compounds, P&R I refers to Table 5 (to NESHAP subpart U) compounds. The standards for wastewater in NESHAP subpart U refer to the provisions in NESHAP subpart G. Generally, the P&R I Group 1 wastewater threshold is the same as in the HON, except P&R I refers to compounds that meet the definition of organic HAP in 40 CFR 63.482 in addition to those listed in table 9 of NESHAP subpart G, and P&R I exempts wastewater that pertain solely and exclusively to organic HAP listed on table 8 of NESHAP subpart G).

P&R II defines wastewater as aqueous liquid waste streams exiting equipment at an affected source. No further stratification into groups for applicability is specified. As previously mentioned, process vents, storage tanks, and wastewater systems[92] combined are regulated according to a production-based emission rate (*e.g.,* pounds HAP per million pounds BLR or WSR produced) standard for existing sources in both BLR (130 pounds) and WSR (10 pounds). For new sources, BLR sources require 98 percent reduction or an overall limit of 5,000 pounds of HAP per year. New WSR sources are limited to 7 pounds of HAP per million pounds WSR produced.

As part of our CAA section 112(d)(6) technology review for HON and P&R I wastewater streams, we evaluated tightening the HON and P&R I wastewater Group 1 applicability thresholds. Specifically, we evaluated the option (option 1) to require owners and operators to manage and treat existing wastewater streams with total annual average concentration of Table 9 (to NESHAP subpart G) compounds (for HON) and Table 5 (to NESHAP subpart U) compounds (for P&R I) greater than or equal to 1,000 ppmw at any flow rate; or greater than or equal to 10 ppmw at a flow rate of 10 lpm or greater. We did not identify any control options for P&R II wastewater streams.

Table 19 of this preamble presents the nationwide costs and impacts for the wastewater stream control option considered for HON facilities. Table 20 of this preamble presents the nationwide costs and impacts for the wastewater stream control option considered for P&R I facilities. For details on the assumptions and methodologies used in this analysis, see the document titled *Clean Air Act Section 112(d)(6) Technology Review for Wastewater Streams Located in the SOCMI Source Category that are Associated with Processes Subject to HON and for Wastewater Streams that are Associated with Processes Subject to Group I and II Polymers and Resins NESHAP,* which is available in the docket for this rulemaking.

We determined that the option to revise wastewater stream Group 1 threshold applicability (*i.e.,* to require control of existing wastewater streams with total annual average concentration of Table 9 to subpart G compounds (for HON) or Table 5 to 40 CFR 63, subpart U compounds (for P&R I) greater than or equal to 1,000 ppmw at any flow rate; or greater than or equal to 10 ppmw at a flow rate of 10 lpm or greater) is not cost effective based on the costs and emission reductions presented. Therefore, we are not proposing to revise the HON and P&R I to reflect the requirements of this option pursuant to CAA section 112(d)(6). Also, we did not identify any developments in practices, processes, or control technologies for P&R II wastewater that would achieve a greater HAP emission reduction beyond the emission reduction already required by P&R II. Therefore, we are not proposing any changes to P&R II for this emission process group based on our technology review.

[91] P&R I and P&R II sources do not have transfer racks as emission sources.

[92] P&R II defines a wastewater system as a system made up of a drain system and one or more waste management units; and a wastewater management unit means any component, piece of equipment, structure, or transport mechanism used in storing, treating, or disposing of wastewater streams, or conveying wastewater between storage, treatment, or disposal operations.

TABLE 19—NATIONWIDE EMISSIONS REDUCTIONS AND COST IMPACTS OF CONTROL OPTIONS CONSIDERED FOR WASTEWATER STREAMS AT HON FACILITIES

Control option	Total capital investment ($)	Total annualized costs ($/yr)	VOC emission reductions (tpy)	HAP emission reductions (tpy)	HAP cost effectiveness ($/ton)
1	504,766,000	210,739,500	2,755	2,755	76,500

TABLE 20—NATIONWIDE EMISSIONS REDUCTIONS AND COST IMPACTS OF CONTROL OPTIONS CONSIDERED FOR WASTEWATER STREAMS AT P&R I FACILITIES

Control option	Total capital investment ($)	Total annualized costs ($/yr)	VOC emission reductions (tpy)	HAP emission reductions (tpy)	HAP cost effectiveness ($/ton)
1	46,847,800	22,548,200	220	220	102,500

6. Standards for Equipment Leaks

As previously mentioned, emissions of VOC and HAP from equipment leaks occur in the form of gases or liquids that escape to the atmosphere through many types of connection points (*e.g.,* threaded fittings) or through the moving parts of certain types of process equipment during normal operation. Equipment regulated by the HON, P&R I, and P&R II includes agitators, compressors, connectors, instrumentation systems, OEL, PRDs, pumps, sampling collection systems, and valves [93] that contain or contact material that is 5 percent by weight or more of organic HAP, operate 300 hours per year or more, and are not in vacuum service. The results of our CAA section 112(d)(6) technology review for equipment leaks associated with HON, P&R I, and P&R II processes are discussed in section III.C.6.a of this preamble. Equipment regulated by NSPS subpart VVa includes connectors, compressors, PRDs, pumps, sampling collection systems, OEL, and valves that contain or contact material that are 10 percent by weight or more of VOC, operate 300 hours per year or more, and are not in vacuum service. The results of our CAA 111(b)(1)(B) review for equipment leaks subject to NSPS subpart VVa are discussed in section III.C.6.b of this preamble.

a. HON, P&R I, and P&R II

The HON, P&R I, and P&R II standards for BLR, require owners or operators to meet the control requirements of NESHAP subpart H which contains the MACT standard for equipment leaks, including LDAR provisions and other control requirements. Subpart H was also identified in P&R II as the appropriate level of control for facilities producing WSR, but additional compliance options were allowed in the P&R II rule for WSR sources. We are proposing to no longer allow the additional compliance options for WSR sources, and to require that all sources comply with the HON equipment leaks regulations (see section III.D.10 of this preamble for further details about this proposed amendment). Depending on the type of equipment, the standards require either periodic monitoring for and repair of leaks, the use of specified equipment to minimize leaks, or specified work practices. Monitoring for leaks generally must be conducted using EPA Method 21 in appendix A–7 to 40 CFR part 60 or other approved equivalent monitoring techniques. The equipment leak HON, P&R I, and P&R II requirements vary by equipment (component) type but require LDAR using monitoring with EPA Method 21 of appendix A–7 to 40 CFR part 60 at certain frequencies (*e.g.,* monthly, quarterly, every 2 quarters, annually) and have varying leak definitions (*e.g.,* 500 ppm, 1,000 ppm, 10,000 ppm) depending on the type of service (*e.g.,* gas and vapor service or in light liquid service). The LDAR requirements for components in heavy liquid service include sensory monitoring (*e.g.,* visual, audible, olfactory).

The practices, processes, and control technologies considered during MACT development for equipment leaks at HON, P&R I, and P&R II facilities included LDAR. To identify developments for the technology review, we reviewed responses to our CAA section 114 request, the BACT/LAER database, and evaluated other federal regulations (*i.e.,* the Petroleum Refinery Sector rule, MON, and NSPS subpart VVa) and state regulations (*i.e.,* the Texas fugitive emissions rules [94] applicable to petrochemical processes). Also, the EPA conducted a general analysis in a 2011 equipment leaks study [95] to identify the latest developments in practices, processes, and control technologies for equipment leaks at chemical manufacturing facilities and petroleum refineries and estimated the impacts of applying those practices, processes, and control technologies to model facilities. We used this 2011 equipment leaks analysis as a reference for conducting the technology review for equipment leaks at HON, P&R I, and P&R II facilities.

Our technology review for equipment leaks of HAP (*e.g.,* broader than the EtO discussed in section II.B.2.a.ii of this preamble) identified several developments in LDAR practices and processes: (1) Lowering the leak definition for valves in light liquid service from 500 ppm to 100 ppm with monthly monitoring and skip periods; (2) in addition to requirements specified in option 1, lowering the leak definition for valves in gas and vapor service from 500 ppm to 100 ppm with monthly monitoring and skip periods; and (3) in addition to requirements specified in option 2, lowering the leak definition for pumps in light liquid service from 1,000 ppm to 500 ppm with monthly monitoring. For all other component types, we did not identify developments in LDAR practices and processes in the chemical sector.[96]

[93] We believe P&R II contains a typographical error in that valves are currently excluded from the definition of equipment leaks at 40 CFR 63.522; see section III.D.10 of this preamble for our rationale for this conclusion and our proposal to address this issue.

[94] 30 TAC 115, subchapters D and H, Division 3.

[95] Hancy. 2011. Memorandum from Hancy, C., RTI International to Howard, J., EPA/OAQPS. Analysis of Emissions Reduction Techniques for Equipment Leaks. December 21, 2011. EPA Docket ID No. EPA–HQ–OAR–2010–0869.

[96] We note that while other technologies such as optical gas imaging and sensor networks may be considered developments in monitoring for

Emissions reductions were estimated for the new developments that we identified using component counts and emission factors. The component counts were derived using data provided to the EPA in response to our CAA section 114 request (see section II.C of this preamble). We developed model component counts for 207 HON facilities, 19 P&R I facilities (and 10 of the P&R I facilities are collocated with HON processes), and 5 P&R II facilities (and 3 of the P&R II facilities are collocated with HON processes). We then multiplied the number of nationwide HON, P&R I, and P&R II processes [97] by the model component counts to estimate the nationwide component counts. Subsequently, baseline emissions and emissions after implementation of the controls for each component were calculated using these nationwide component counts and emission factors and leak frequencies for the chemical manufacturing industry from the 2011 equipment leaks study.

Costs were then calculated for the baseline and control options, which reflect the cost to implement an LDAR program for each component. Note that the difference between the costs for the baseline and control options is the incremental cost to comply with the controls. Furthermore, because the control options result in chemicals in process lines not leaking and therefore, not being lost, we present costs both with and without this consideration. To estimate savings in chemicals not being emitted (*i.e.,* lost) due to the equipment leak control options, we applied a recovery credit of $900 per ton of VOC to the emission reductions in the analyses.

We calculated the VOC and HAP cost effectiveness by dividing the incremental annual costs by the emissions reductions. Table 21 of this preamble presents the nationwide costs and impacts for the suite of equipment leak control options considered for HON facilities (including 10 P&R I facilities and 3 P&R II facilities collocated with HON facilities). Table 22 of this preamble presents the nationwide costs and impacts for the suite of equipment leak control options considered for P&R I facilities (not collocated with HON facilities). Table 23 of this preamble presents the nationwide costs and impacts for the suite of equipment leak control options considered for P&R II facilities (not collocated with HON facilities). For details on the assumptions and methodologies used in this analysis, see the document titled *Clean Air Act Section 112(d)(6) Technology Review for Equipment Leaks Located in the SOCMI Source Category that are Associated with Processes Subject to HON and for Equipment Leaks that are Associated with Processes Subject to Group I and II Polymers and Resins NESHAP,* which is available in the docket for this rulemaking.

Based on the costs and emission reductions for each of the options, we determined that none of them are cost effective. Therefore, we are not proposing to revise the HON, P&R I, and P&R II to reflect the requirements of these options pursuant to CAA section 112(d)(6).

TABLE 21—NATIONWIDE EMISSIONS REDUCTIONS AND COST IMPACTS OF CONTROL OPTIONS CONSIDERED FOR HON EQUIPMENT NOT IN EtO SERVICE

Control option	Total capital investment ($)	Total annualized costs w/o credits ($/yr)	Total annualized costs with credits ($/yr)	HAP emission reductions (tpy)	Average HAP cost effectiveness with credits ($/ton)	Average HAP cost effectiveness w/o credits ($/ton)	Average incremental HAP cost effectiveness with credits ($/ton)
1	2,079,000	538,400	393,000	16	25,000	34,000	.....
2	3,637,000	872,000	672,000	22	31,000	40,000	47,000
3	4,926,00	1,325,000	1,105,000	24	46,000	55,000	217,000

TABLE 22—NATIONWIDE EMISSIONS REDUCTIONS AND COST IMPACTS OF CONTROL OPTIONS CONSIDERED FOR P&R I EQUIPMENT

Control option	Total capital investment ($)	Total annualized costs w/o credits ($/yr)	Total annualized costs with credits ($/yr)	HAP emission reductions (tpy)	HAP cost effectiveness with credits ($/ton)	HAP cost effectiveness w/o credits ($/ton)	Average incremental HAP cost effectiveness with credits ($/ton)
1	62,300	16,100	11,700	0.48	24,000	34,000	.....
2	109,000	26,200	20,200	0.67	30,000	39,000	45,000
3	148,000	40,500	33,900	0.73	46,000	55,000	228,000

equipment leaks, the EPA did not evaluate these options further as we have insufficient information on how use of such monitoring technology compares to current EPA Method 21 practices for chemical sector sources and we are soliciting comment on these technologies. See section V of this preamble for more details.

[97] We used information from the 2006 RTR HON proposal preamble (see pg. 34434: *https://www.govinfo.gov/content/pkg/FR-2006-06-14/pdf/06-5219.pdf*) to estimate the number of HON CMPUs nationwide. In 2006, the EPA estimated 729 CMPUs nationwide from 238 HON facilities based off information from the American Chemistry Council. We scaled this data to 207 HON facilities [(207 × 729)/238 = 634]. For P&R I facilities we assumed 1 EPPU per facility resulting in 19 EPPU's. For P&R II facilities we assumed each facility had 1 process unit associated with either WSR or BLR processes resulting in 5 process units total.

TABLE 23—NATIONWIDE EMISSIONS REDUCTIONS AND COST IMPACTS OF CONTROL OPTIONS CONSIDERED FOR P&R II EQUIPMENT

Control option	Total capital investment ($)	Total annualized costs w/o credits ($/yr)	Total annualized costs with credits ($/yr)	HAP emission reductions (tpy)	HAP cost effectiveness with credits ($/ton)	HAP cost effectiveness w/o credits ($/ton)	Average incremental HAP cost effectiveness with credits ($/ton)
1	16,400	4,300	3,200	0.13	25,000	33,000	.....
2	28,700	7,000	5,400	0.18	30,000	39,000	44,000
3	39,400	10,700	8,900	0.19	47,000	56,000	350,000

b. NSPS Subpart VVa

This action presents the EPA's review of the requirements of 40 CFR part 60, subpart VVa pursuant to CAA section 111(b)(1)(B). As described in section II.G.2 of this preamble, the statutory review of these NSPS focused on whether there are any emission reduction techniques that are used in practice that achieve greater emission reductions than those currently required by these NSPS and whether any of these developments in practices have become the BSER. Based on this review, we have determined that the BSER for reducing VOC emissions from equipment leaks from SOCMI processes remain work practice standards based on LDAR. However, we have determined that there are techniques used in practice related to LDAR of certain equipment that achieve greater emission reductions than those currently required by NSPS subpart VVa. We are proposing that BSER for gas and light liquid valves is the same monitoring in an LDAR program as NSPS subpart VVa, but now at a leak definition of 100 ppm, and BSER for connectors is monitoring in the LDAR program at a leak definition of 500 ppm and monitored annually, with reduced frequency for good performance. The rationale for this proposed action is presented in more detail below. Pursuant to CAA section 111(a), the proposed NSPS included in this action would apply to facilities that begin construction, reconstruction, or modification after April 25, 2023 (see section III.F.2 of this preamble).

NSPS subpart VVa regulates equipment leaks from SOCMI affected facilities whose construction, reconstruction, or modification commenced after November 7, 2006. NSPS subpart VVa addresses fugitive emissions of VOC from SOCMI affected facilities. Fugitive emissions are emissions caused by leaks in processing equipment. NSPS subpart VVa defines the affected facility as the ''group of all equipment within a process unit,'' with equipment meaning ''each pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, valve, and flange or other connector in VOC service and any devices or systems required by this subpart.'' In other words, the affected facility is the collection of all the valves, pumps, etc., within a process unit. For the purpose of NSPS subpart VVa, the process units are those components assembled to produce any of the chemicals listed in 40 CFR 60.489a of subpart VVa. In promulgating NSPS subpart VVa, the EPA determined that BSER is work practice standards for equipment leaks based on LDAR and other control requirements. The standards apply to connectors, compressors, PRDs, pumps, sampling collection systems, OEL, and valves in VOC service. A piece of equipment is in VOC service if it contains or contacts a fluid that is at least 10 percent by weight or more of VOC. Depending on the type of equipment, the standards require either periodic monitoring for and repair of leaks, the use of specified equipment to minimize leaks, or specified work practices. Monitoring for leaks must be conducted using EPA Method 21 in appendix A–7 to 40 CFR part 60 or other approved equivalent monitoring techniques. These standards are generally the same as those for HON equipment leaks, except the standards apply to VOC instead of HAP, and the connector monitoring requirements in VVa were stayed.[98]

For our review of NSPS subpart VVa, we reviewed the RACT/BACT/LAER clearinghouse database, and other EPA, state, and local regulatory development efforts related to equipment leaks to determine advances in process operations, design or efficiency improvements, or other systems of emission reduction. The 2011 equipment leaks study (see section III.C.6.a of the preamble) considered a 100 ppm leak definition, and we identified at least one regulation, in the Bay Area Air Quality Management District (BAAQMD), that requires gas and light liquid valves to meet a 100 ppm leak definition. Additionally, in recent consent decrees, the EPA has required low-emitting gas and light liquid valves be used.[99] Low-emitting valves use low emission packing in the valve stem to reduce emissions below 100 ppm, but even these low-emitting valves can eventually leak over time, as valve packing can deteriorate as valves get used more and more. Discussions with valve manufacturers have also shown that low-emitting valves are comparable in cost to normal valves and are considered by at least one manufacturer to be the valve standard commonly used by their customers. Because low-emitting valves do not continually keep leaks below 100 ppm, the EPA did not consider these valves as best system of emission reduction. Instead, the EPA evaluated BSER based on LDAR at different leak definitions.

We also evaluated the HON equipment leak requirements as many NSPS process units are already complying with such requirements. The HON equipment leak standards require monitoring connectors at a leak definition of 500 ppm annually, with reduced monitoring frequency with good performance. These are the same requirements as the stayed VVa connector monitoring requirements.

Based on the information gathered from our review of NSPS subpart VVa, we evaluated the following two control options. Option 1 was lowering the leak definition for gas and light liquid valves from 500 ppm to 100 ppm. Option 2 was Option 1 plus adding connector monitoring requirements from the stayed 2006 subpart VVa final rule, which is also consistent with the current HON requirements.

For both options considered, we calculated the average costs and cost effectiveness on an affected facility basis. Table 24 of this preamble summarizes these average costs, cost-effectiveness, and emissions reductions on an affected facility basis. For

[98] See 73 FR 31372, June 2, 2008.

[99] *https://www.epa.gov/sites/default/files/2013-09/documents/dowchemical-cd.pdf.*

additional details, see the document titled *CAA 111(b)(1)(B) review for the SOCMI Equipment Leaks NSPS Subpart VVa* which is available in the docket for this rulemaking.

TABLE 24—AVERAGE COST AND ENVIRONMENTAL IMPACTS FOR EQUIPMENT LEAK OPTIONS PER AFFECTED FACILITY

Control option	Total capital investment ($)	Total annual cost ($/yr)	Total annual cost w/recovery credits ($/yr)	VOC emission reductions (tpy)	Cost-effectiveness w/recovery credits ($/ton VOC)	
					Average	Incremental
Option 1: Gas and LL valve monitoring monthly at a leak definition of 100 ppm, with skip periods [1]	10,100	2,360	1,780	0.64	2,780	N/A
Option 2: Option 1 plus connector monitoring annually at a leak definition of 500 ppm, with skip periods	208,300	38,800	30,500	9	3,390	3,400

[1] Skip periods refers to reduced monitoring frequency, *i.e.,* skipping monitoring during some periods due to good performance.

We are proposing to determine Option 2 to be cost-effective for new, modified, and reconstructed sources. Many SOCMI facilities are already complying with these requirements. Based on the results of our analysis, we are proposing BSER for NSPS subpart VVb to be NSPS subpart VVa plus revising the equipment leak standards in a new subpart VVb to lower the leak definition for gas and light liquid valves from 500 ppm to 100 ppm and include requirements for connectors consistent with the HON requirements.

We conducted an analysis to estimate how many affected facilities are expected/projected to be subject to the proposed equipment leak requirements presented above. An affected facility can become subject to NSPS subpart VVb under one of the following scenarios: (1) The affected facility is at a new greenfield facility; (2) the affected facility is a new affected facility at an existing plant site; (3) an existing affected facility is modified; or (4) an existing affected facility triggers the reconstruction requirements. For scenario 1 (*i.e.,* affected facility is at a new greenfield facility), we assumed only one greenfield facility, with two process units, will trigger NSPS subpart VVb over the next 5 years. We used facility responses to our CAA section 114 request to help us determine the number of facilities that could potentially trigger scenarios 2, 3, and 4.

For scenario 2 (*i.e.,* new affected facilities constructed at existing plant sites), we assessed information from facilities responding to the EPA's CAA section 114 request. The responses to the CAA section 114 request showed 34 affected facilities subject to NSPS subparts VV or VVa. One of the affected facilities was a new construction in the last 5 years. The OECA's ECHO tool (*https://echo.epa.gov*) indicates there are currently 592 SOCMI facilities subject to subpart VV or VVa. We assumed an average of two affected facilities per plant site. Assuming the same distribution of new construction, 34 new affected facilities would have been constructed in the last 5 years for all SOCMI facilities. The analysis assumes that the same number of affected facilities that were constructed in the last 5 years would be constructed in the next 5 years.

For scenario 3 (*i.e.,* existing facility is modified) and scenario 4 (*i.e.,* existing facility triggers reconstruction requirements), facilities responding to the EPA's CAA section 114 request did not report any modified or reconstructed facilities in the last 5 years or in the last 10 years. Eight of the 34 affected facilities discussed in scenario 2 indicated either modification or reconstruction since their construction, ranging back to the 1940's. We assumed the eight affected facilities were modifications because the reconstruction requirements are less likely to be triggered. For scenario 3 we assumed that at least one affected facility would be modified in the next 5 years, likely by addition of new unit operations that would increase the number of components. We also assumed that no affected facilities will trigger the reconstruction requirements in scenario 4.

Table 25 of this preamble presents the nationwide impacts for the Option 2. See the document titled *CAA 111(b)(1)(B) review for the SOCMI Equipment Leaks NSPS Subpart VVa,* which is available in the docket for this rulemaking, for details on the assumptions and methodologies used in this analysis. We are proposing that affected facilities that are constructed, reconstructed, or modified after April 25, 2023 would be subject to these proposed requirements in NSPS subpart VVb. We solicit comment on all of the proposed requirements related to standards for equipment leaks in new NSPS subpart VVb.

TABLE 25—NATIONWIDE EMISSIONS REDUCTIONS AND COST IMPACTS OF CONTROL OPTIONS CONSIDERED FOR AFFECTED FACILITIES TRIGGERING NSPS SUBPART VVb

Scenario	Total capital investment ($)	Total annual cost ($/yr)	Total annual cost w/recovery credits ($/yr)	VOC emission reductions (tpy)	Cost-effectiveness w/recovery credits ($/ton VOC)
Scenario 1 (*i.e.,* two affected facilities at a new greenfield facility)	416,600	77,500	60,900	18	3,380
Scenario 2 (*i.e.,* 34 new affected facilities)	7,081,700	1,317,900	1,035,800	313	3,310
Scenarios 3 and (*i.e.,* one modified existing affected facility)	208,300	38,800	30,500	9	3,390

TABLE 25—NATIONWIDE EMISSIONS REDUCTIONS AND COST IMPACTS OF CONTROL OPTIONS CONSIDERED FOR AFFECTED FACILITIES TRIGGERING NSPS SUBPART VVb—Continued

Scenario	Total capital investment ($)	Total annual cost ($/yr)	Total annual cost w/recovery credits ($/yr)	VOC emission reductions (tpy)	Cost-effectiveness w/recovery credits ($/ton VOC)
Total	7,706,600	1,434,200	1,127,200	340	3,320

7. Standards for Fenceline Monitoring

Fenceline monitoring refers to the placement of monitors along the perimeter of a facility to measure pollutant concentrations. Coupled with requirements for root cause analysis and corrective action upon triggering an actionable level, this work practice standard is a development in practices considered under CAA section 112(d)(6) for the purposes of managing fugitive emissions. The measurement of these pollutant concentrations and comparison to concentrations estimated from mass emissions via dispersion modeling is used to ground-truth emission estimates from a facility's emissions inventory. If concentrations at the fenceline are greater than expected, the likely cause is that there are underreported or unknown emission sources affecting the monitors. In addition to the direct indication that emissions may be higher than inventories would suggest, fenceline monitoring provides information on the location of potential emissions sources because it provides complete spatial coverage of a facility. Further, when used with a mitigation strategy, such as root cause analysis and corrective action upon exceedance of an action level, fenceline monitoring can be effective in reducing emissions and reducing the uncertainty associated with emissions estimation and characterization. Finally, public reporting of fenceline monitoring data provides public transparency and greater visibility, leading to more focus and effort in reducing emissions. Fenceline monitoring has not yet been required or considered in prior rulemaking actions or regulations governing SOCMI, P&R I or P&R II HAP emissions, but has been required for Petroleum Refineries in 40 CFR part 63, subpart CC (see 40 CFR 63.658). As such we evaluated the application of fenceline monitoring as a development in practices, processes, and control technologies pursuant to CAA section 112(d)(6). As further explained below, our evaluation only focuses on HON and P&R I facilities that use, produce, store, or emit benzene, 1,3-butadiene, chloroprene, ethylene dichloride, EtO, or vinyl chloride.

Fenceline monitoring has been successfully applied to the petroleum refineries source category as a technique to manage and reduce benzene emissions from fugitive emissions sources such as storage vessels, wastewater treatment systems, and leaking equipment. In 2015, the EPA promulgated the RTR for the petroleum refineries source category and required that refineries install and operate fenceline monitors following EPA Reference Method 325 A/B to monitor benzene emissions. The 2015 rule (80 FR 75178) required that refineries install and begin operating passive diffusive tube monitors by 2018 and report benzene emissions monitoring data to the EPA beginning in 2019.[100] Additionally, the 2015 rule required that refineries conduct a root cause analysis to identify sources of high fenceline monitoring readings (*i.e.,* above an annual action level) and then develop a corrective action plan to address the sources and reduce emissions to a level that will bring fenceline monitoring concentrations below the action level.[101] To date, the EPA has received fenceline monitoring data for more than four years.[102] These data show that petroleum refinery fenceline concentrations have dropped by an average of 30 percent since the inception of the monitoring program requirements. These results illustrate that fenceline monitoring is an effective tool in reducing emissions and preserving emission reductions on an ongoing basis for these sources.

The majority of emissions from sources covered by the HON and P&R I are fugitive in nature and are often difficult to characterize and quantify. In order to assess the effect of emissions for purposes of risk characterization, we rely on the assumption that reported emissions are accurate. Thus, if the reported inventories are accurate, all facilities should be able to meet the fenceline concentration action levels considering the controls we are proposing. Further, fenceline monitoring provides the facility and the EPA with an understanding of where the concentrations of toxic HAP exceed expected concentrations and provide a path for owners and operators to further identify the root causes of such exceedances and to mitigate emissions from these sources. For facilities regulated by the HON or P&R I, the EPA identified six specific HAP that we determined were the most appropriate, useful, and suitable for inclusion on the fenceline monitoring program. These compounds were identified as cancer risk drivers in the prior RTRs for the HON and P&R I conducted in 2006 (HON) and 2008 and 2011 (P&R I) or identified as cancer risk drivers in the residual risk reviews proposed in this action, and each is emitted (largely as fugitive emissions) from processes at HON and P&R I sources.[103] As part of our CAA section 114 request, we also collected fenceline monitoring data for these compounds at various facilities and often found them to be present in concentrations that were higher than our modeling of reported emissions inventories would predict.[104] Although the model to monitor averages are not quantitatively comparable because they are based on different time periods (*i.e.,* an annual average versus 7 sampling periods), the monitored concentrations typically exceeded concentrations established by the modeling; in some cases, by multiple orders of magnitude. This is an indicator that reported emissions may be underestimated. Therefore, in this action, the EPA is proposing at 40 CFR 63.184 to implement a fenceline monitoring

[100] See 40 CFR 63.658(a) and 40 CFR 63.655(h)(8).

[101] 40 CFR 63.658(f)–(h).

[102] Quarterly fenceline monitoring reports are available through the EPA's WebFIRE database at *https://cfpub.epa.gov/webfire/.* The EPA has also developed a dashboard to improve public access to this data. The dashboard is available at *https://awsedap.epa.gov/public/extensions/Fenceline_Monitoring/Fenceline_Monitoring.html?sheet=MonitoringDashboard.*

[103] P&R II sources do not emit any of these six pollutants.

[104] See model to monitor comparison in the document entitled *Clean Air Act Section 112(d)(6) Technology Review for Fenceline Monitoring located in the SOCMI Source Category that are Associated with Processes Subject to HON and for Fenceline Monitoring that are Associated with Processes Subject to Group I Polymers and Resins NESHAP,* which is available in the docket for this rulemaking.

program under CAA section 112(d)(6) to limit fugitive emissions. We are proposing to require fenceline monitoring at facilities in the SOCMI and P&R I source categories that use, produce, store, or emit benzene, 1,3-butadiene, chloroprene, EtO, ethylene dichloride, or vinyl chloride. A brief summary of the proposed fenceline sampling requirements and our rationale for selecting the corrective action concentration levels are provided below. We solicit comment on the proposed standards for fenceline monitoring.

Developments in monitoring technology and practices. The EPA reviewed the available literature and identified two different methods for monitoring fugitive emissions of benzene, 1,3-butadiene, chloroprene, ethylene dichloride, EtO, and vinyl chloride around a chemical facility. These methods include: (1) Passive diffusive tube monitoring networks for the measurement of benzene, 1,3-butadiene, chloroprene, and ethylene dichloride; and (2) Canister monitoring networks for the measurement of EtO and vinyl chloride. We considered these monitoring methods as developments in practices under CAA section 112(d)(6) for purposes of managing fugitive emission sources at chemical manufacturing facilities.

Fenceline passive diffusive tube monitoring networks employ a series of diffusive tube samplers at set intervals along the fenceline to measure a time-integrated [105] ambient air concentration at each sampling location. A diffusive tube sampler consists of a small tube filled with an adsorbent, selected based on the pollutant(s) of interest, and capped with a specially designed cover with small holes that allow ambient air to diffuse into the tube at a small, fixed rate. Diffusive tube samplers have been demonstrated to be a cost-effective, accurate technique for measuring concentrations of pollutants (*e.g.,* benzene) resulting from fugitive emissions in a number of studies [106] [107] as well as in the petroleum refining sector.[108] In addition, diffusive samplers are used in the European Union to monitor and maintain air quality, as described in European Union directives 2008/50/EC and Measurement Standard EN 14662–4:2005 for benzene. The International Organization for Standardization developed a standard method for diffusive sampling (ISO/FDIS 16017–2). In recent years, the EPA has expanded the use of diffusive sorbent tubes through our CAA Section 114 authority to evaluate fenceline concentrations of HAP in addition to benzene, such as chloroprene and 1,3-butadiene. To support these efforts, the EPA used existing uptake rates included in EPA Methods 325A/B at 40 CFR part 63, Appendix A, and when necessary, developed new uptake rates.[109] Therefore, the EPA is proposing to require fenceline monitoring of benzene, chloroprene, 1,3-butadiene, and ethylene dichloride measured with 14-day sampling periods using diffusive tube samplers in accordance with EPA Methods 325A/B at 40 CFR part 63, Appendix A. The EPA notes that based on recent studies, we will be incorporating new sorbents and revised uptake rates for certain pollutants in an upcoming revision to EPA Method 325B.[110]

In this action, the EPA is proposing a new EPA reference method to monitor the concentration of EtO and vinyl chloride from facility fenceline locations, EPA Method 327 to 40 CFR part 63, Appendix A. EPA Method 327 is a canister sampling and analysis method that provides procedures for measuring trace levels of targeted VOC (including organic HAP) in ambient air. It draws upon the guidance in Method TO–15A [111] for canister sampling and further develops this guidance into a robust method specific for fenceline monitoring, defining required data quality objectives, and incorporating existing best practices into the method. In EPA Method 327, ambient air samples are collected using specially prepared and pre-cleaned evacuated stainless-steel canisters. For analysis, a known volume of air is directed from the canister to a pre-concentrator, and the targeted VOC from the sample are measured using a gas chromatograph-mass spectrometer (GC–MS). The EPA is proposing to require fenceline monitoring of EtO and vinyl chloride with 24-hour sampling periods once every 5 days using canister sampling in accordance with EPA Method 327 at 40 CFR part 63, appendix A. This monitoring frequency is necessary to ensure that all onsite processes are monitored regularly and approaches the time-integrated sampling of EPA Methods 325A/B, while still maintaining the cost effectiveness of implementing a canister monitoring network. A sampling frequency of every five days will also help to reduce the possibility of only monitoring emission spikes such that the annual average concentration is indicative of the actual average emissions from the site.

The EPA considered requiring EPA Method 327 for monitoring ethylene dichloride, because ethylene dichloride is almost always going to be monitored alongside vinyl chloride. Because vinyl chloride is monitored with EPA Method 327, monitoring ethylene dichloride with EPA Method 327 would simplify the monitoring and increase the cost effectiveness of implementing the fenceline monitoring program. However, in this action EPA has chosen to require EPA Methods 325A/B for monitoring ethylene dichloride because based on the available data, at least one vinyl chloride monomer facility reported emissions of chloroprene, which would require that facility to monitor for chloroprene with EPA Methods 325A/B. Because monitoring with EPA Methods 325A/B is more continuous than with EPA Method 327 and the results with EPA Methods 325A/B generally have less variability, monitoring with EPA Methods 325A/B is the preferred approach. We are however soliciting comment on whether we should allow the use of EPA Method 327 for monitoring fenceline concentration of ethylene dichloride for sites that have to monitor fenceline concentrations of vinyl chloride but do not have to monitor fenceline concentrations of chloroprene, benzene, or 1,3-butadiene.

While EPA Method 327 is based on Method TO–15A, there are notable differences between the two methods. EPA Method 327 addresses some of the challenges encountered while performing sampling and analysis of EtO with Method TO–15A by incorporating best practices into the method. EPA Method 327 also is written

[105] Time-integrated sampling refers to the collection of a sample at a controlled rate. The sample provides an average concentration over the sample period. For the diffusive tube samplers, the controlled rate of sampling is dictated by the uptake rate. The uptake rate is the amount of a compound that can be absorbed by a particular sorbent over time during the sampling period.

[106] McKay, J., M. Molyneux, G. Pizzella, V. Radojcic. *Environmental Levels of Benzene at the Boundaries of Three European Refineries,* prepared by the CONCAWE Air Quality Management Group's Special Task Force on Benzene Monitoring at Refinery Fenceline (AQ/STF–45), Brussels, June 1999.

[107] Thoma, E.D., M.C. Miller, K.C. Chung, N.L. Parsons, B.C. Shine. 2011. *Facility Fenceline Monitoring using Passive Samplers,* J. Air & Waste Manage Assoc. 61: 834–842.

[108] See EPA–HQ–OAR–2010–0682; fenceline concentration data collected for the petroleum refining sector rulemaking can be accessed via the Benzene Fenceline Monitoring Dashboard at *https://awsedap.epa.gov/public/extensions/Fenceline_Monitoring/Fenceline_Monitoring.html?sheet=MonitoringDashboard.*

[109] Docket Reference to ''Method 325B Addendum A, Evaluation of Chloroprene Uptake Rate Report.''

[110] Markes International Ltd. Uptake Rate Tests: Tests for a range of compounds onto four sorbent types over periods of 1 and 2 weeks. September 27, 2022.

[111] *https://www.epa.gov/sites/default/files/2019-12/documents/to-15a_vocs.pdf.*

to mandate actions within the method as opposed to providing guidance on how the method should be performed. The major differences between Method TO–15A and Method 327 include the following, but are not limited to:

- Updated sample cleanliness requirements and removal of the option for glass bottles and non-rigid containers.
- invalidation of samples that do not meet initial and final canister pressure requirements.
- requirement to examine chromatograms for potential interferences, with a strong recommendation for the use of full scan ion spectra MS mode during analysis.
- requirements for certification and recertification of standards to ensure the quality and stability of the standards.
- requirements for one field blank and one field duplicate for each sampling period.
- requirement for the field blank diluent gas to be humidified zero air.
- maximum allowed sample holding time of 7 days.
- requirement to drift correct measured values based on continuous calibration verification criteria according to the procedures in EPA Method 325B.

To achieve the lowest possible detection limits with canister sampling, the EPA has determined that it is necessary to mandate these best practices within EPA Method 327. Although facilities were asked to follow these best practices in the CAA section 114 request, the data submitted in response to the request indicated there are sampling and analysis issues that still need to be addressed, especially in regard to measuring EtO.

While the EPA acknowledges that there are some drawbacks of time-integrated sampling, including the lack of immediate feedback on the acquired data and the loss of short-term temporal information, our experience with the fenceline monitoring program in the petroleum refining sector has proven that these systems are capable of achieving meaningful emissions reductions by allowing earlier detection of significant fugitive emissions than conventional source-specific monitoring, such as through a periodic leak detection program with EPA Method 21 of 40 CFR part 60, appendix A–7. Additionally, time-integrated monitoring systems are generally lower-cost and require less labor than time-resolved [112] monitoring systems; they generally have lower detection capabilities as well. Time-resolved monitoring stations have been used for a variety of pollutants in a variety of settings and the methods are well-established. However, compared to the passive diffusive tube monitoring stations or canister sampling, time-resolved monitoring stations are more expensive, more labor-intensive, and generally require highly-trained staff to operate. The EPA acknowledges the state of technology is advancing and that the capabilities of these systems will continue to improve and that the costs will likely decrease. Therefore, we are providing a pathway for an owner or operator to request use of other types of monitoring networks to demonstrate compliance with the fenceline standards through a request for an alternative test method under the provisions of 40 CFR 63.7(f).

Siting, design, and sampling requirements for fenceline monitors. The EPA is proposing that fenceline monitors be deployed to measure fenceline concentrations of benzene, 1,3-butadiene, chloroprene, ethylene dichloride, EtO, and vinyl chloride at chemical manufacturing facilities subject to the HON or P&R I. A primary requirement for a fenceline monitoring system is that it provides adequate spatial coverage for determination of representative pollutant concentrations at the boundary of the facility. In an ideal scenario, fenceline monitors would be placed so that any fugitive plume originating within the facility would have a high probability of intersecting one or more monitors, regardless of wind direction. Therefore, we are proposing that for passive diffuse tube monitoring of benzene, 1,3-butadiene, chloroprene, and ethylene dichloride, facilities determine the appropriate number and location of fenceline sampling monitors using the siting method requirements described in EPA Method 325A of 40 CFR part 63, Appendix A. Sample collection and analysis of the passive tubes would be performed according to EPA Methods 325A and 325B of 40 CFR part 63, appendix A.

For canister monitoring of EtO and vinyl chloride, the EPA is proposing that each facility would place 8 canisters evenly spaced on the monitoring perimeter. The monitoring perimeter may be the facility fenceline or may be inside the facility fenceline as long as all sources of the monitored compound(s) are contained within the perimeter. Because we recognize that the spatial coverage provided by this arrangement is less than that provided under EPA Method 325A, the EPA is also proposing that facilities would be required to move the canister sampling locations with alternating sampling periods in order to ensure complete spatial coverage of the facility. For facilities with emission sources of monitored pollutants that are not contained within one contiguous area, the EPA is proposing that these secondary areas would be monitored as well, with the number of canisters on the secondary area dictated by the size of the area. The proposed requirements for siting the canisters are described in NESHAP subpart H (see proposed 40 CFR 63.184). While we recognize that EPA Method 325A contains an option for siting passive tubes by determining the geographic center of the facility and spacing the tubes based on measured angles from the center point, the EPA has chosen not to provide a similar approach for the canisters in order to simplify the siting of the canisters. We request comment on the proposed approach for siting the canisters and whether we should provide an alternative siting approach based on measured angles from the center point.

For each sampling period (2-week period for passive tubes or 24-hour period for canisters), the facility would determine a delta c, calculated as the lowest sample value for the compound of interest subtracted from the highest sample value for the compound of interest. This approach is intended to subtract out the estimated contribution from background emissions that do not originate from the facility. The delta c for the most recent year of samples (26 sampling periods for passive tubes and 73 sampling periods for canisters) would be averaged to calculate an annual average delta c. The annual average delta c would be determined on a rolling basis, meaning that it is updated with every new sample (*i.e.,* for passive tubes, every 2 weeks a new annual average delta c is determined from the most recent 26 sampling periods and for canisters, every 5 days a new annual average delta c is determined from the most recent 73 sampling periods). This rolling annual average delta c would be calculated for each compound of interest and compared against a concentration action level for each pollutant.

Action levels and rationale. As mentioned above, the EPA is proposing to require facilities subject to the HON and P&R I to take corrective action to reduce fugitive emissions if monitored fenceline concentrations exceed a specific concentration action level on a

[112] Time resolved monitoring involves sampling within short timeframes (generally on the magnitude of minutes to hours) in order to see the variation in concentration of a compound in near real time.

rolling annual average basis.[113] For benzene, 1,3-butadiene, ethylene dichloride, and vinyl chloride, we selected the proposed fenceline action levels by modeling fenceline HAP concentrations using the emissions inventories used in the residual risk assessment of the facility-wide review of the SOCMI source category and Neoprene Production source category (*e.g.,* 2017 NEI), assuming that those reported emissions represented full compliance with all proposed HON or P&R I requirements, adjusted for additional control requirements we are proposing in this action.[114] We estimated the long-term fenceline post-control HAP concentrations at each facility using the post-control facility-wide emissions inventory and the EPA's HEM. Concentrations were estimated by the model at a set of polar grid receptors centered on each facility, as well as surrounding census block centroid receptors extending from the facility outward to 50 km (~31 miles). For purposes of this modeling analysis, we assumed that the nearest off-site polar grid receptor was the best representation of each facility's fenceline concentration in the post-control case, unless there was a census block centroid nearer to the fenceline than the nearest off-site polar grid receptor or an actual receptor was identified from review of the site map. In those instances, we estimated the fenceline concentration as the concentration at the census block centroid. Only receptors (either the polar or census block) that were estimated to be outside the facility fenceline were considered in determining the maximum HAP concentration level for each facility. After modeling each facility, we then selected the maximum annual average benzene, 1,3-butadiene, ethylene dichloride, and vinyl chloride fenceline concentration modeled at any facility as the action level for that HAP. Thus, if the reported inventories are accurate, all facilities should be able to meet the fenceline concentration action levels. We note that this analysis does not correlate to any particular metric related to risk. The maximum annual average HAP concentrations modeled at the fenceline for any facility, rounded to one significant figure, were 9 micrograms per cubic meter (μg/m^3, benzene),[115] 3 μg/m^3 (1,3-butadiene), 4 μg/m^3 (ethylene dichloride), and 3 μg/m^3 (vinyl chloride). Therefore, the EPA is proposing these fenceline concentrations as action levels for these four HAP.

Due to current limitations in method detection limits for EtO and chloroprene, and the concerns for cancer risk driven by these two pollutants, we selected the proposed fenceline action levels to be equal to three times the representative detection limit (RDL) for these two pollutants, as this is the minimum concentration that can be measured with reasonable certainty. The RDL is based on the results of the best performing testing companies and laboratories using the most sensitive analytical procedures. A multiplication factor of three is used to reduce the imprecision of the method until the imprecision in the sampling and analysis is similar to the precision of other EPA methods. The RDL for chloroprene was determined to be 0.09 μg/m^3, and the RDL for EtO was determined to be 0.07 μg/m^3. Therefore, the EPA is proposing action levels of 0.3 μg/m^3 for chloroprene and 0.2 μg/m^3 for EtO. We acknowledge that these proposed concentrations are lower than the fenceline modeled concentrations for EtO and chloroprene from facilities in the SOCMI and Neoprene Production source categories after implementation of our proposed standards; however, considering whole facility risks, and in light of the configuration of the emission sources subject to these rules that contribute to whole facility risk that remain for the impacted communities after the imposition of controls, we set the action levels of chloroprene and EtO at facility boundaries as low as possible (considering method detection limitations) to ensure emission reductions anticipated from implementation of controls used to meet the proposed standards and to achieve additional HAP emission reductions. Though we have not proposed to prescribe additional specific controls to the existing inventories because remaining emissions are fugitive in nature and less certain in terms of frequency of events and characterization of emissions, there are still measures that are likely available that could be employed to address emission sources in a more directed manner. For example, identifying and reducing emissions from sources such as maintenance events that could not be accounted for in the post control modeling exercise would be effective in achieving additional emission reductions. In addition to proposing this fenceline monitoring work practice standard under CAA section 112(d)(6) reflecting developments in practices, processes, and control technologies, we also request comment on whether it would be appropriate, in the final rulemaking, to promulgate these proposed fenceline monitoring work practice standards, including the proposed fenceline action levels for EtO and chloroprene, under the second step of the CAA section 112(f)(2) residual risk decision framework to provide an ample margin of safety to protect public health. Making such a determination might be warranted, for example, in light of the fact that we considered the facility-wide risk as an additional factor not considered in the source category-specific risk acceptability decisions for the SOCMI and Neoprene Production source categories that are both the subject of this single combined rulemaking action.

For further details of the analysis, see the document titled *Clean Air Act Section 112(d)(6) Technology Review for Fenceline Monitoring located in the SOCMI Source Category that are Associated with Processes Subject to HON and for Fenceline Monitoring that are Associated with Processes Subject to Group I Polymers and Resins NESHAP,* which is available in the docket for this rulemaking.

Non-source category emissions. This proposed approach also considers the possibility that offsite sources could contribute to modeled concentrations at a facility's fenceline. Additionally, non-HON and non-P&R I sources could be located within facility property boundaries that also contribute to monitor readings. In this proposal, we are allowing the subtraction of offsite interfering sources (as they are not within the control of the owner or operator) through site specific monitoring plans, but we are not providing this option for onsite, non-source category emissions. The action levels above were based on facility-wide emissions, and therefore these non-source category sources have been considered in their development. Applying the fenceline standard to the whole facility will also limit emissions of toxic HAP from all sources and provide more certainty in decisions being made on whether the entire facility emissions align with what is expected from the EPA's analysis. It will also provide assurances to fenceline communities that emission reductions are achieved and maintained. This is important in the chemical sector, where there could be numerous source

[113] Calculated every two weeks for benzene, 1,3-butadiene, ethylene dichloride, and chloroprene. Calculated every five days for ethylene oxide and vinyl chloride.

[114] We note that 10 of the 19 facilities with P&R I processes also have HON processes.

[115] Since we are considering facility-wide emissions, an action level of 9 μg/m^3 was chosen for benzene since the refinery who set the action level in 2015 for that source category is also a HON facility.

categories that can be collocated within a larger facility, and have common tank farms, wastewater systems, heat exchangers, APCDs, fuel gas systems, etc., that may be assigned or apportioned to various source categories.

Corrective action requirements. The proposed fenceline monitoring provisions would require the initiation of root cause analysis upon exceeding the annual average concentration as determined on a rolling average every sampling period. The root cause analysis is an assessment conducted through a process of investigation to determine the primary underlying cause and other contributing causes of an exceedance of the action level. The root cause analysis would be required to be initiated within 5 days of determining that an updated annual average concentration of a target pollutant exceeds the applicable action level. A root cause analysis must be conducted following each 14-day sampling period in which the annual average concentration(s) remain above the action level to determine whether the monitoring results and associated data indicate additional sources of emissions contributing to concentrations remaining above the action level. If the owner or operator cannot determine the root cause of the exceedance within 30 days of determining there was an exceedance of an action level, the owner or operator would be required to use real-time sampling techniques (*e.g.,* mobile gas chromatographs) to determine the root cause of the exceedance.

If the underlying causes of the action level exceedance are deemed to be from sources under the control of the owner or operator, the owner or operator would be required to take corrective action to address the underlying cause of the exceedance and to bring concentrations back below the action level as expeditiously as possible. Completion of the root cause analysis and initial corrective action would be required within 45 days of determining that there was an exceedance of an action level. If the owner or operator requires longer than 45 days to implement the corrective actions identified by the root cause analysis, the owner or operator would be required to submit a corrective action plan no later than 60 days after completion of the root cause analysis.

After completion of the initial corrective action, if the delta c for the next sampling period for samples collected by EPA Methods 325A/B or the next three sampling periods for samples collected by EPA Method 327 [116] are below the action level, then the corrective action is assumed to have fixed the problem, and the owner and/or operator would have no further obligation for additional corrective action. However, if the delta c for the subsequent sampling periods after initial corrective action is over the action level, then the owner or operator would have to submit a corrective action plan and schedule for implementing design, operation, and maintenance changes to eliminate as quickly as possible and prevent recurrence of the primary cause and other contributing causes to the exceedance of the action level in order to reduce annual average concentrations below the action level. The owner or operator would be required to include the implementation of real-time sampling techniques to locate the primary and other contributing causes of the exceedance in the corrective action plan. While the action level(s) are based on annual average concentrations, once an action level is exceeded, each sampling period that exceeds the action level contributes to the delta c remaining above the action level. An investigation must be conducted following these high biweekly periods to determine the root cause and, if appropriate, to correct the root cause expeditiously in order to bring the annual average delta c below the action level.

Costs associated with fenceline monitoring requirements. We estimated costs to monitor for benzene, 1,3-butadiene, chloroprene, and ethylene dichloride at the fenceline using final rule costs for passive diffusive tube monitoring using the medium model plant costs for the 2015 Petroleum Refinery Sector final rule (80 FR 75178, December 1, 2015) and scaled costs to 2021 dollars. For EtO and vinyl chloride, we estimated fenceline monitoring costs for 8 summa cannisters around the fenceline every 5 days. We also note that there a number of HON facilities that are either collocated with refineries who are already conducting passive diffusion tube fenceline monitoring for benzene as well as some HON facilities under consent decree conducting fenceline monitoring for benzene with passive diffusion tubes, so costs to add laboratory analysis for a second analyte under this action are minimal (*i.e.,* $1,300 more per year) for these facilities, and why monitoring scenario 2 in the table below for the HON is less costly than monitoring scenario 1 even though more facilities fall into the monitoring scenario 2 category. In total for this proposed rulemaking package, we estimate nationwide impacts for fenceline monitoring to be $9,881,000 for total capital investment and $33,310,000 per year for total annualized cost, and estimate that 126 of the 207 HON facilities and 12 of the 19 P&R I facilities would be required to conduct fenceline monitoring as they emit at least one of the six HAP of interest. Tables 26 and 27 provide the breakdown of estimated nationwide costs for fenceline monitoring as applied to all HON and P&R I sources. Note that ten facilities have collocated sources subject to multiple NESHAP (*i.e.,* the HON and P&R I) and would be required to conduct fenceline monitoring under both rules, therefore where this occurred, we assigned costs and included the facility under the SOCMI source category for impacts to avoid double counting. For further information, see the document titled *Clean Air Act Section 112(d)(6) Technology Review for Fenceline Monitoring located in the SOCMI Source Category that are Associated with Processes Subject to HON and for Fenceline Monitoring that are Associated with Processes Subject to Group I Polymers and Resins NESHAP,* which is available in the docket for this rulemaking.

[116] The EPA is proposing that three sample periods must remain below the action level for samples taken by EPA Method 327 because three is equal to the number of samples that would be taken during one sample period for EPA Methods 325A/B. Requiring three sample periods also ensures that a sample will have been taken at every monitoring location at the site following the completion of the corrective action.

TABLE 26—NATIONWIDE COST IMPACTS OF FENCELINE MONITORING FOR HON

Monitoring scenario	Number facilities impacted	Monitoring option description	Total capital investment ($)	Total annualized costs (million $/yr)
1	35	Passives only (1 analyte)	4,016,000	2,141,000
2	46	Passives only (2 analytes)	2,295,000	1,282,000
3	9	Cannisters only	115,500	5,366,000
4	16	Cannisters and passives (1 analyte)	1,606,000	10,397,000
5	20	Cannisters and passives (2 analytes)	1,721,000	12,869,000

TABLE 27—NATIONWIDE COST IMPACTS OF FENCELINE MONITORING FOR P&R I

Monitoring scenario	Number facilities impacted	Monitoring option description	Total capital investment ($)	Total annualized costs ($/yr)
1	1	Cannisters and passives (2 analytes)	114,700	659,000
2	1	Cannisters only	12,800	596,000

Additional requirements of the fenceline monitoring program. The EPA is proposing at 40 CFR 63.182(e) that fenceline data be reported on a quarterly basis. Each report would contain the results for each sample where the field portion of sampling is completed by the end of the quarter, as well as for associated field and method blanks (*i.e.,* each report would contain data for at least 6, 2-week sampling periods and 18 canister sampling periods). These data would be reported electronically to the EPA within 45 days of the end of each quarterly period. See section III.E.3 of this preamble for further discussion on electronic reporting and section III.F.1 of this preamble for further discussion on the compliance dates we are proposing.

D. What actions related to CAA section 112(d)(2) and (3) are we taking in addition to those identified in the CAA sections 112(f)(2) and (d)(6) risk and technology reviews and CAA section 111(b)(1)(B) NSPS reviews?

In addition to the proposed actions discussed in this section III.B of this preamble to reduce risk from EtO emission sources (from HON processes) and chloroprene emission sources (from P&R I affected sources producing neoprene), and our proposed actions discussed in this section III.C of this preamble on NESHAP technology reviews, we are also proposing other requirements for the HON, P&R I, and P&R II based on analyses performed pursuant to CAA section 112(d)(2) and (3),[117] and that are consistent with *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), ensuring that CAA section 112 standards apply continuously. We are proposing to: (1) Add new monitoring and operational requirements for HON and P&R I flares, (2) add work practice standards for periods of SSM for certain HON and P&R I vent streams (*i.e.,* PRD releases, maintenance vents, and planned routine maintenance of storage vessels), (3) clarify regulatory provisions for vent control bypasses for certain HON and P&R I vent streams (*i.e.,* closed vent systems containing bypass lines), (4) add dioxins and furans emission limits to the HON, P&R I, and P&R II, (5) add new monitoring requirements for HON and P&R I pressure vessels, (6) add new emission standards for HON & P&R I surge control vessels and bottoms receivers, (7) revise the applicability threshold for HON transfer racks, (8) add requirements to P&R II for heat exchange systems, and (9) add requirements to P&R II for WSR sources and equipment leaks. See the subsections below for specific details regarding these proposed actions, and for which rules (*i.e.,* HON, P&R I, and/or P&R II) we are proposing these actions.

1. Flares

The EPA is proposing under CAA section 112(d)(2) and (3) to amend the operating and monitoring requirements for flares used as APCDs in the SOCMI and P&R I source categories because we have determined that the current requirements for flares are not adequate to ensure the level of destruction efficiency needed to conform with the MACT standards in the HON and P&R I.[118] As previously mentioned in section III.C.3.b of this preamble, we are also proposing these same operating and monitoring requirements for flares for NSPS subparts IIIa, NNNa, and RRRa under CAA section 111(b)(1)(B). Flares are commonly used within the SOCMI and P&R I source categories. The requirements applicable to flares, which are used to control emissions from various emission sources (*e.g.,* process vents, storage vessels, transfer racks, equipment leaks, wastewater streams), are set forth in the General Provisions to 40 CFR part 63 and are cross-referenced in the HON and P&R I. In general, flares used as APCDs are expected to achieve 98 percent HAP destruction efficiencies when designed and operated according to the requirements in the General Provisions. Studies on flare performance,[119] however, indicate that these General Provision requirements are inadequate to ensure proper performance of flares at refineries and other petrochemical facilities (including SOCMI facilities), particularly when either assist steam or assist air is used. In addition, over the last decade, flare minimization efforts at these facilities have led to an increasing number of flares operating at well below their

[117] The EPA has authority under CAA section 112(d)(2) and (3) to set MACT standards for previously unregulated emission points. The EPA also retains the discretion to revise a MACT standard under the authority of CAA section 112(d)(2) and (3) (see *Portland Cement Ass'n* v. *EPA,* 665 F.3d 177, 189 (D.C. Cir. 2011)), such as when it identifies an error in the original standard. See also *Medical Waste Inst.* v. *EPA,* 645 F.3d 420, 426 (D.C. Cir. 2011) (upholding the EPA action establishing MACT floors, based on post-compliance data, when originally-established floors were improperly established).

[118] P&R II sources do not use flares as APCDs as they are making resins from chlorinated chemicals (*i.e.,* epichlorohydrin feedstocks), and chlorinated chemicals are not controlled with flares.

[119] For a list of studies, refer to the technical report titled *Parameters for Properly Designed and Operated Flares,* in Docket ID Item No. EPA–HQ–OAR–2010–0682–0191.

design capacity, and while these efforts have resulted in reduced flaring of gases, situations of over assisting with either steam or air have become exacerbated, leading to the degradation of flare combustion efficiency. Many HON and P&R I facilities operate directly downstream from refineries and other petrochemical plants (*e.g.,* ethylene production plants) and, consequently, likely burn similar types of waste gas constituents to a refinery or petrochemical plant (*e.g.,* olefins and hydrogen). Given that flares at petrochemical plants, SOCMI facilities, and a polymers and resins plant were also included in the flare dataset that formed the underlying basis of the new standards for refinery flares, we are proposing to apply the finalized suite of operational and monitoring requirements for refinery flares [120] to those flares in the SOCMI source category that control emissions from HON and P&R I processes. Therefore, these proposed amendments at 40 CFR 63.108 (for HON) and 40 CFR 63.508 (for P&R I) will ensure that continuous compliance with the CAA section 112(d)(2) and (3) standards is achieved for HON and P&R I facilities that use flares as APCDs to meet the MACT standards at all times when controlling HAP emissions.

The General Provisions of 40 CFR 63.11(b) specify that flares be: (1) Steam-assisted, air-assisted, or non-assisted; (2) operated at all times when emissions may be vented to them; (3) designed for and operated with no visible emissions (except for periods not to exceed a total of 5 minutes during any 2 consecutive hours); and (4) operated with the presence of a pilot flame at all times. These General Provisions also specify both the minimum heat content of gas combusted in the flare and maximum exit velocity at the flare tip. The General Provisions specify monitoring for the presence of the pilot flame and the operation of a flare with no visible emissions. We are proposing to revise the General Provisions table to NESHAP subpart F (Table 3) and the General Provisions table to NESHAP subpart U (Table 1), entries for 40 CFR 63.8(a)(4) and 40 CFR 63.11 such that these provisions do not apply to flares because we are proposing to replace these provisions with new standards we are proposing for flares used to comply with the MACT standards in the HON and P&R I.

In 2012, the EPA compiled information and test data collected on flares and summarized its preliminary findings on operating parameters that affect flare combustion efficiency in a technical report titled *Parameters for Properly Designed and Operated Flares,* in Docket ID Item No. EPA–HQ–OAR–2010–0682–0191.[121] The EPA submitted this report, along with a charge statement and a set of charge questions, to an external peer review panel.[122] The panel, consisting of individuals representing a variety of backgrounds and perspectives (*i.e.,* industry, academia, environmental experts, and industrial flare consultants), concurred with the EPA's assessment that the following three primary factors affect flare performance: (1) The flow of the vent gas to the flare; (2) the amount of assist media (*e.g.,* steam or air) added to the flare; and (3) the combustibility of the vent gas/assist media mixture in the combustion zone (*i.e.,* the net heating value, lower flammability, and/or combustibles concentration) at the flare tip. In response to peer review comments, the EPA performed a validation and usability analysis on all available test data as well as a failure analysis on potential parameters discussed in the technical report as indicators of flare performance. The peer review comments are in the document titled *Peer Review of Parameters for Properly Designed and Operated Flares,* available in Docket ID Item No. EPA–HQ–OAR–2010–0682–0193, which has been incorporated into the docket for this rulemaking. These analyses resulted in a change to the population of test data that the EPA used and helped form the basis for the flare operating limits promulgated in the 2015 Petroleum Refinery Sector MACT final rule at 40 CFR part 63, subpart CC (80 FR 75178).[123] We are also relying on the same analyses and proposing the same operating limits for flares used as APCDs in the SOCMI source category that control emissions from HON processes (hereafter referred to as ''HON flares''). The Agency believes, given the results from the various data analyses conducted for the Petroleum Refinery Sector rule, that the operating limits promulgated for flares used in the petroleum refinery sector are also appropriate and reasonable for HON flares, and will ensure that these flares meet the HAP destruction and removal efficiency at all times. Therefore, we are proposing at 40 CFR 63.108 (for HON processes) and 40 CFR 63.508 (for P&R I processes) to replace all flare requirements throughout the HON [124] and P&R I [125] with the Petroleum Refinery Sector rule flare definitions and requirements in 40 CFR part 63, subpart CC, with certain clarifications and exemptions discussed in this section of the preamble, including, but not limited to, specifying that several definitions in 40 CFR part 63, subpart CC, that apply to petroleum refinery flares also apply to flares in the SOCMI source category, adding a definition and requirements for pressure-assisted multi-point flares, and specifying additional requirements when a gas chromatograph or mass spectrometer is used for compositional analysis.

The remainder of this section of the preamble includes a discussion of requirements that we are proposing for HON and P&R I flares, along with impacts and costs associated with these proposed revisions. Specifically, this action proposes that HON and P&R I flares operate pilot flame systems continuously and that flares operate with no visible emissions (except for periods not to exceed a total of 5 minutes during any 2 consecutive hours) when the flare vent gas flow rate is below the smokeless capacity of the flare. In addition, this action proposes to consolidate measures related to flare tip velocity and proposes new operational and monitoring requirements related to the combustion zone gas. Further, in keeping with the elimination of the SSM exemption as discussed in section III.E.1 of this preamble, this action proposes a work practice standard related to the visible emissions during periods when the flare is operated above its smokeless capacity (*e.g.,* periods of emergency flaring). Currently, the MACT standards in the HON and P&R I cross-reference the General Provisions at 40 CFR

[120] See 40 CFR 63.670 and 40 CFR 63.671 (originally finalized in 80 FR 75178 on December 1, 2015; and amended in 81 FR 45232 on July 13, 2016, in 83 FR 60696 on November 26, 2018, and in 85 FR 6064 on February 4, 2020).

[121] See section II.D of this preamble, which addresses the incorporation by reference of certain docket files such as this one into the docket for this rulemaking.

[122] These documents can also be found at *https://www.epa.gov/stationary-sources-air-pollution/review-peer-review-parameters-properly-designed-and-operated-flares.*

[123] See the document titled *Flare Performance Data: Summary of Peer Review Comments and Additional Data Analysis for Steam-Assisted Flares,* in Docket ID Item No. EPA–HQ–OAR–2010–0682–0200 for a more detailed discussion of the data quality and analysis; the document titled *Petroleum Refinery Sector Rule: Operating Limits for Flares,* in Docket ID Item No. EPA–HQ–OAR–2010–0682–0206 for a more detailed discussion of the failure analysis and the document titled *Flare Control Option Impacts for Final Refinery Sector Rule,* in Docket ID Item No. EPA–HQ–OAR–2010–0682–0748 for additional analyses on flare performance standards based on public comments received on the proposed Petroleum Refinery Sector rule.

[124] Refer to proposed 40 CFR 63.108(a)(1) through (a)(22) for a list of HON provisions that would no longer apply.

[125] Refer to proposed 40 CFR 63.508(a)(1) through (a)(32) for a list of P&R I provisions that would no longer apply.

63.11(b) for the operational requirements for flares used as APCD. This proposal eliminates cross-references to the General Provisions and instead specifies all new operational and monitoring requirements that are intended to apply to flares used as APCDs in the HON and P&R I standards. We are also proposing to include provisions at 40 CFR 63.110(j) that address compliance with the proposed operating and monitoring requirements for flares in lieu of flare-related requirements of any other 40 CFR part 60, 61, or 63 rule.

a. Pilot Flames

The HON and P&R I reference the flare requirements in 40 CFR 63.11(b), which specify that a flare used as an APCD should operate with a pilot flame present at all times. Pilot flames are proven to improve flare flame stability, and even short durations of an extinguished pilot could cause a significant reduction in flare destruction efficiency. In this proposal, we are proposing to remove the cross-reference to the General Provisions for HON and P&R I flares and instead cross-reference 40 CFR part 63, subpart CC, to include in the HON the existing provision that flares operate with a pilot flame at all times and be continuously monitored for a pilot flame using a thermocouple or any other equivalent device. We are also proposing to add a continuous compliance measure that would consider each 15-minute block when there is at least 1 minute where no pilot flame is present when regulated material is routed to the flare as a deviation from the standard. Refer to 40 CFR 63.108 (for HON), 40 CFR 63.508 (for P&R I), and 40 CFR 63.670(b) and (g) for these proposed requirements. See section III.D.1.e of this preamble for our rationale for proposing to use a 15-minute block averaging period for determining continuous compliance. We solicit comment on the proposed revisions for flare pilot flames.

b. Visible Emissions

The HON and P&R I reference 40 CFR 63.11(b), which specifies that a flare used as an APCD should operate with visible emissions for no more than 5 minutes in a 2-hour period. Owners or operators of these flares are required to conduct an initial performance demonstration for visible emissions using Method 22 of Appendix A–7 to 40 CFR part 60 (''Method 22''). We are proposing to remove the cross-reference to the General Provisions for HON and P&R I flares and instead cross-reference 40 CFR part 63, subpart CC, to include this same limitation on visible emissions. We are also proposing to clarify that the initial 2-hour visible emissions demonstration should be conducted the first time regulated materials are routed to the flare.

With regard to continuous compliance with the visible emissions limitation, we are proposing daily visible emissions monitoring for HON and P&R I flares whenever regulated material is routed to the flare and also visible emissions monitoring whenever visible emissions are observed from the flare. On days that the flare receives regulated material, we are proposing that owners or operators of HON and P&R I flares monitor visible emissions at a minimum of once per day while the flare is receiving regulated material using an observation period of 5 minutes and Method 22. Additionally, whenever regulated material is routed to a flare and there are visual emissions from the flare, we are proposing that another 5-minute visible emissions observation period be performed using Method 22, even if the minimum required daily visible emission monitoring has already been performed. For example, if an employee observes visible emissions, the owner or operator of the flare would perform a 5-minute Method 22 observation to check for compliance upon initial observation or notification of such event. In addition, in lieu of daily visible emissions observations performed using Method 22, we are proposing that owners and operators be allowed to use video surveillance cameras. We believe that video surveillance cameras would be at least as effective as the proposed daily 5-minute visible emissions observations using Method 22.

We are also proposing to extend the observation period for a HON or P&R I flare to 2 hours whenever visible emissions are observed for greater than 1 continuous minute during any of the 5-minute observation periods. Refer to 40 CFR 63.108 (for HON), 40 CFR 63.508 (for P&R I), and 40 CFR 63.670(c) and (h) for these proposed requirements. We acknowledge that operating a flare near the incipient smoke point (the point at which black smoke begins to form within the flame) results in good combustion at the flare tip; however, smoking flares can contribute significantly to emissions of particulate matter that is 2.5 micrometers in diameter or smaller ($PM_{2.5}$). Thus, while increasing the allowable period for visible emissions may be useful from an operational perspective, we do not believe the allowable period for visible emissions should be increased to more than 5 minutes in any 2-hour period. We solicit comment on the proposed allowable period for visible emissions from flares.

As discussed later in this section, we are proposing additional operational and monitoring requirements for HON and P&R I flares that we expect will result in owners or operators of CMPUs installing equipment that can be used to fine-tune and control the amount of assist steam or air introduced at the flare tip such that combustion efficiency of the flare will be maximized. These monitoring and control systems will assist these flare owners or operators to operate near the incipient smoke point without exceeding the visible emissions limit. While combustion efficiency may be highest at the incipient smoke point, it is not significantly higher than the combustion efficiency achieved by the proposed operating limits discussed in section III.D.1.d of this preamble. As seen in the performance curves for flares, there is very limited improvement in flare performance beyond the performance achieved at the proposed operating limits (see document titled *Petroleum Refinery Sector Rule: Operating Limits for Flares,* in Docket ID Item No. EPA–HQ–OAR–2010–0682–0206, which has been incorporated into the docket for this rulemaking). We solicit comments and data on appropriate periods of visible emissions that would encourage operation at the incipient smoke point.

In addition, we are proposing that the owner or operator establish the smokeless capacity of each HON and P&R I flare based on design specification of the flare, and that the visible emissions limitation only apply when the flare vent gas flow rate is below its smokeless capacity. We are proposing a work practice standard for the limited times (*i.e.,* during emergency releases) when the flow to a flare exceeds the smokeless capacity of the flare, based on comments the EPA received on the proposed Petroleum Refinery Sector rule. Refer to 40 CFR 63.108 (for HON), 40 CFR 63.508 (for P&R I), and 40 CFR 63.670(o) for these proposed provisions. In the Petroleum Refinery Sector final rule, the EPA explained that numerous comments on the proposal suggested that flares are not designed to meet the visible emissions requirements when operated beyond their smokeless capacity (80 FR 75178). According to commenters, flares are typically designed to operate in a smokeless manner at 20 to 30 percent of full hydraulic load. Thus, they claimed, flares have two different design capacities: A ''smokeless capacity'' to handle normal operations and typical process variations and a ''hydraulic load capacity'' to handle very large volumes

of gases discharged to the flare as a result of an emergency shutdown. According to commenters, this is inherent in all flare designs and has not previously been an issue because flare operating limits did not apply during malfunction events.

For this proposed work practice standard, owners or operators would need to develop a flare management plan for HON and P&R I flares that identifies procedures for limiting discharges to the flare as a result of process upsets or malfunctions that cause the flare to exceed its smokeless capacity. In addition, for any flare that exceeds both the smokeless design capacity and visible emissions limit, we are proposing that owners or operators would need to conduct a specific root cause analysis and take corrective action to prevent the recurrence of a similarly caused event (similar to the prevention measures we are proposing in this rule to minimize the likelihood of a PRD release, see section III.D.2.a of this preamble). We are proposing that if the root cause analysis indicates that the exceedance of the visible emissions limit is caused by operator error or poor maintenance, then the exceedance would be considered a deviation from the work practice standard. We are also proposing that a second event within a rolling 3-year period from the same root cause on the same equipment would be considered a deviation from the standard. Finally, we are proposing that a third visible emissions limit exceedance occurring from the same flare in a rolling 3-year period would be a deviation from the work practice standard, regardless of the cause.

In several of the EPA's previous impact analyses (for petroleum refinery flares and ethylene production flares),[126] the EPA established the number of events in a given time period that would be the ''backstop'' (*i.e.,* a violation of the standard). In each of these analyses, the EPA evaluated four different timing alternatives (2 in 5 years; 2 in 3 years; 3 in 5 years; and 3 in 3 years) based on the number of existing flares evaluated over a 20-year period, and ultimately the EPA concluded that 3 events in 3 years would be ''achievable'' for the average of the best performing flares. We see no reason why this would be any different for HON and P&R I flares. Even if a best-performing flare ''typically'' only has one event every seven years, the fact that these events are random by nature (unpredictable, not under the direct control of the owner or operator) makes it difficult to use a 5-year time span. Based on this analysis, three events in 3 years would appear to be ''achievable'' for the average of the best performing flares.

c. Flare Tip Velocity

This action consolidates provisions related to flare tip velocity for HON and P&R I flares. The HON and P&R I reference the flare provisions in 40 CFR 63.11(b), which specify maximum flare tip velocities based on flare type (non-assisted, steam-assisted, or air-assisted) and the net heating value of the flare vent gas. Based on data provided to EPA in response to our CAA section 114 request (see section II.C of this preamble), 10 of the 18 flares that HON and P&R I facilities reported using as APCDs are either steam- or air-assisted (see the document titled *Control Option Impacts for Flares Located in the SOCMI Source Category that Control Emissions from Processes Subject to HON and for Flares that Control Emissions from Processes Subject to Group I and Group II Polymers and Resins NESHAPs,* which is available in the docket for this rulemaking). Maximum flare tip velocities are required to ensure that the flame does not ''lift off'' the flare (*i.e.,* a condition where a flame separates from the tip of the flare and there is space between the flare tip and the bottom of the flame), which could cause flame instability and/or potentially result in a portion of the flare gas being released without proper combustion. We are proposing to remove the cross-reference to the General Provisions for HON and P&R I flares and instead cross-reference 40 CFR part 63, subpart CC, to consolidate the provisions for maximum flare tip velocity into the HON and P&R I as a single equation, irrespective of flare type (*i.e.,* steam-assisted, air-assisted, or non-assisted). Refer to 40 CFR 63.108 (for HON), 40 CFR 63.508 (for P&R I), and 40 CFR 63.670(d), (i), and (k) for these proposed provisions.

Based on analysis conducted for the Petroleum Refinery Sector rule, the EPA identified air-assisted test runs with high flare tip velocities that had high combustion efficiencies (see the document titled *Petroleum Refinery Sector Rule: Evaluation of Flare Tip Velocity Requirements,* in Docket ID Item No. EPA–HQ–OAR–2010–0682–0212). These test runs exceeded the maximum flare tip velocity limits for air-assisted flares using the linear equation in 40 CFR 63.11(b)(8). When these test runs were compared with the test runs for non-assisted and steam-assisted flares, air-assisted flares appeared to have the same operating envelope as the non-assisted and steam-assisted flares. Therefore, for air-assisted HON and P&R I flares, we are proposing the use of the same equation that non-assisted and steam-assisted flares currently use to establish the flare tip velocity operating limit. We are also proposing that the owner or operator determine the flare tip velocity on a 15-minute block average basis. See section III.D.1.e of this preamble for our rationale for proposing to use a 15-minute block averaging period for determining continuous compliance.

Finally, we are also proposing not to include the provision for the special flare tip velocity equation in the General Provisions at 40 CFR 63.11(b)(6)(i)(A) for non-assisted HON and P&R I flares with hydrogen content greater than 8 percent. This equation, which was developed based on limited data from a chemical manufacturer, has very limited applicability for flares used as APCDs in the SOCMI source category because it only provides an alternative for non-assisted flares with large quantities of hydrogen. Available data indicates that approximately 50 percent of the flares used at HON and P&R I facilities are either steam-assisted or air-assisted, which seems to indicate that approximately 50 percent are non-assisted flares. Instead, we are proposing compliance alternatives that we believe provide a better way for HON and P&R I flares with high hydrogen content to comply with the rule while ensuring proper destruction performance of the flare (see section III.D.1.d of this preamble for the proposed compliance alternatives). Therefore, for non-assisted HON and P&R I flares with hydrogen content greater than 8 percent that are used as ACPDs, we are not proposing to include this special flare tip velocity equation as a compliance alternative. We request comment on the need to include this equation.

d. Net Heating Value of the Combustion Zone Gas

The current provisions for flares in 40 CFR 63.11(b) specify that the flare vent gas meet a minimum net heating value of 200 British thermal units per standard cubic foot (Btu/scf) for non-assisted flares and 300 Btu/scf for air- and steam-assisted flares. The HON and P&R I reference these provisions, but neither the General Provisions nor the HON or P&R I include specific requirements for monitoring the net heating value of the flare vent gas. Moreover, recent flare testing results indicate that meeting a minimum net heating value limit alone does not address instances when the flare may be

[126] See EPA–HQ–OAR–2010–0682–0793, EPA–HQ–OAR–2010–0682–0794, and EPA–HQ–OAR–2017–0357–0017.

over-assisted because it only considers the net heating value of the gas being combusted in the flare and nothing else (*e.g.,* no assist media). However, many industrial flares use steam or air as an assist medium to protect the design of the flare tip, promote turbulence for the mixing, induce air into the flame, and operate with no visible emissions. Using excessive steam or air results in dilution and cooling of flared gases and can lead to operating a flare outside its stable flame envelope, reducing the destruction efficiency of the flare. In extreme cases, over-steaming or excess aeration can snuff out a flame and allow regulated material to be released into the atmosphere without complete combustion. As previously noted, because available data indicate that a preponderance of all HON and P&R I flares are either steam- or air-assisted, it is critical that we ensure the assist media is accounted for in some form. Recent flare test data have shown that the best way to account for situations of over-assisting is to consider the gas mixture properties at the flare tip in the combustion zone when evaluating the ability to combust efficiently. As discussed in the introduction to this section, the external peer review panel concurred with our assessment that the combustion zone properties at the flare tip are critical parameters to know in determining whether a flare will achieve good combustion. The General Provisions, however, solely rely on the net heating value of the flare vent gas, and we have determined that is not sufficient for the flares at issue.

In this proposal, in lieu of requiring compliance with the operating limits for net heating value of the flare vent gas in the General Provisions, we are proposing to cross-reference 40 CFR part 63, subpart CC, to include in the HON and P&R I a single minimum operating limit for the net heating value in the combustion zone gas (NHVcz) of 270 Btu/scf during any 15-minute period for steam-assisted, air-assisted, and non-assisted HON and P&R I flares. Refer to 40 CFR 63.108 (for HON), 40 CFR 63.508 (for P&R I), and 40 CFR 63.670I and (m) for these proposed provisions. The Agency believes, given the results from the various data analyses conducted for the Petroleum Refinery Sector rule, that this NHVcz operating limit promulgated for flares in the Petroleum Refinery Sector source category is also appropriate and reasonable and will ensure HON and P&R I flares meet the HAP destruction efficiencies in the standard at all times when operated in concert with the other proposed flare provisions (*e.g.,* pilot flame, visible emissions, and flare tip velocity requirements) (see the memoranda titled: *Petroleum Refinery Sector Rule: Operating Limits for Flares* and *Flare Control Option Impacts for Final Refinery Sector Rule,* in Docket ID Item No. EPA–HQ–OAR–2010–0682–0206 and EPA–HQ–OAR–2010–0682–0748, respectively). In addition, we are proposing that owners or operators may use a corrected heat content of 1,212 Btu/scf for hydrogen, instead of 274 Btu/scf, to demonstrate compliance with the NHVcz operating limit for HON and P&R I flares; however, owners or operators who wish to use the corrected hydrogen heat content must have a system capable of monitoring for the hydrogen content in the flare vent gas. The 1,212 Btu/scf value is based on a comparison between the lower flammability limit and net heating value of hydrogen compared to light organic compounds and has been used in several consent decrees issued by the EPA. Based on analyses conducted for the Petroleum Refinery Sector rule (see the document titled *Flare Control Option Impacts for Final Refinery Sector* in Docket ID Item No. EPA–HQ–OAR–2010–0682–0748), the EPA determined that using a 1,212 Btu/scf value for hydrogen greatly improves the correlation between combustion efficiency and the combustion zone net heating value over the entire array of data.

Furthermore, in addition to the NHVcz operating limit, we are proposing a net heating value dilution parameter (NHVdil) for certain HON and P&R I flares that operate with perimeter assist air. Refer to 40 CFR 63.108 (for HON), 40 CFR 63.508 (for P&R I), and 40 CFR 63.670(f) and (n) for these proposed provisions. For air-assisted flares, use of too much perimeter assist air can lead to poor flare performance. Furthermore, based on our analysis of the air-assisted flare datasets (see the document titled *Petroleum Refinery Sector Rule: Operating Limits for Flares,* in Docket ID Item No. EPA–HQ–OAR–2010–0682–0206), we determined a NHVdil of 22 British thermal units per square foot is necessary to ensure that there is enough combustible material available to adequately combust the gas and pass through the flammability region and also ensure that degradation of flare performance from excess aeration does not occur. We found that including the flow rate of perimeter assist air in the calculation of the NHVcz does not identify all instances of excess aeration and could (in some instances) even allow facilities to send very dilute vent gases to the flare that would not combust (*i.e.,* vent gases below their lower flammability limit could be sent to flare). Instead, the data suggest that the diameter of the flare tip, in concert with the amount of perimeter assist air (and other parameters used to determine NHVcz), provide the inputs necessary to calculate whether this type of flare is over-assisted. This dilution parameter is consistent with the combustion theory that the more time the gas spends in the flammability region above the flare tip, the more likely it will combust. Also, because both the volume of the combustion zone (represented by the diameter) and how quickly this gas is diluted to a point below the flammability region (represented by perimeter assist air flow rate) characterize this time, it is logical that we propose such a parameter.

We also found that some assist steam lines are purposely designed to entrain air into the lower or upper steam at the flare tip; and for flare tips with an effective tip diameter of 9 inches or more, there are no flare tip steam induction designs that can entrain enough assist air to cause a flare operator to have a deviation from the NHVdil operating limit without first deviating from the NHVcz operating limit. Therefore, we are proposing to allow owners or operators of HON and P&R I flares whose only assist air is from perimeter assist air entrained in lower and upper steam at the flare tip and with a flare tip diameter of 9 inches or greater to comply only with the NHVcz operating limit. Steam-assisted flares with perimeter assist air and an effective tip diameter of less than 9 inches would remain subject to the requirement to account for the amount of assist air intentionally entrained within the calculation of NHVdil. However, we recognize that this assist air cannot be directly measured, but the quantity of air entrained is dependent on the assist steam rate and the design of the steam tube's air entrainment system. Therefore, we are proposing provisions to specify that owners or operators of these smaller diameter steam-assisted HON flares use the steam flow rate and the maximum design air-to-steam ratio of the steam tube's air entrainment system for determining the flow rate of this assist air. Using the maximum design ratio will tend to over-estimate the assist air flow rate, which is conservative with respect to ensuring compliance with the NHVdil operating limit.

Finally, we are proposing that owners or operators record and calculate 15-minute block average values for these parameters. Our rationale for selecting a

15-minute block averaging period is provided in section III.D.1.e of this preamble. We solicit comment on the proposed revisions related to NHVcz.

e. Data Averaging Periods for Flare Gas Operating Limits

Except for the visible emissions operating limits as described in section III.D.1.b of this preamble, we are proposing to use a 15-minute block averaging period for each proposed flare operating parameter (*i.e.,* presence of a pilot flame, flare tip velocity, and NHVcz) to ensure that HON and P&R I flares are operated within the appropriate operating conditions. We consider a short averaging time to be the most appropriate for assessing proper flare performance because flare vent gas flow rates and composition can change significantly over short periods of time. Furthermore, because destruction efficiency can fall precipitously when a flare is controlling vent gases below (or outside) the proposed operating limits, short time periods where the operating limits are not met could seriously impact the overall performance of the flare. Refer to the Petroleum Refinery Sector rule preambles (79 FR 36880 and 80 FR 75178) for further details supporting why we believe a 15-minute averaging period is appropriate.

Given the short averaging times for the operating limits, we are proposing special calculation methodologies to enable owners or operators to use ''feed forward'' calculations to ensure compliance with the operating limits on a 15-minute block average for HON and P&R I flares. Specifically, we propose using the results of the compositional analysis determined just prior to a 15-minute block period for the next 15-minute block average. Owners or operators of HON and P&R I flares will then know the vent gas properties for the upcoming 15-minute block period and can adjust assist gas flow rates relative to vent gas flow rates to comply with the proposed operating limits. In other words, ''feed forward'' means that owners or operators would use the net heating value in the vent gas (NHVvg) going into the flare in one 15-minute period to adjust the assist media (*i.e.,* steam or air) and/or the supplemental gas in the next 15-minute period, as necessary, to calculate an NHVcz limit of 270 Btu/scf or greater using the proposed equation. We recognize that when a subsequent measurement value is determined, the instantaneous NHVcz based on that compositional analysis and the flow rates that exist at the time may not be above 270 Btu/scf. We are proposing that this is not a deviation from the operating limit. Rather, we propose that the owner or operator is only required to make operational adjustments based on that information to achieve, at a minimum, the net heating value limit for the subsequent 15-minute block average. We are, however, proposing that failure to make adjustments to assist media or supplemental natural gas using the NHVvg from the previous period in the equation provided for calculating an NHVcz limit of 270 Btu/scf, would be a deviation from the operating limit. Alternatively, because the owner or operator could directly measure the NHVvg on a more frequent basis, such as with a calorimeter (and optional hydrogen analyzer), the process control system is able to adjust more quickly, and the owner or operator can make adjustments to assist media or supplemental natural gas more quickly. In this manner, the owner or operator is not limited by relying on NHVvg data that may not represent the current conditions. We are, therefore, also proposing that the owner or operator may opt to use the NHVvg in such instances from the same period to comply with the operating limit. For examples of ''feed forward'' calculations, please see Attachment 3 of the document titled *Flare Control Option Impacts for Final Refinery Sector Rule,* in Docket ID Item No. EPA–HQ–OAR–2010–0682–0748.

We are also proposing to clarify that when determining compliance with the flare tip velocity and combustion zone operating limits specified in 40 CFR 63.670(d) and (e), the initial 15-minute block period starts with the 15-minute block that includes a full 15 minutes of the flaring event. In other words, we are proposing to clarify that the owner or operator demonstrate compliance with the velocity and NHVcz requirements starting with the block that contains the fifteenth minute of a flaring event; and the owner or operator is not required to demonstrate compliance for the previous 15-minute block in which the event started and contained only a fraction of flow. We solicit comment on these proposed revisions.

f. Flares in Dedicated Service

In lieu of requiring the composition of the vent gas and the NHVvg to be continuously monitored, we are proposing an alternative monitoring approach for HON and P&R I flares that are in dedicated service that have consistent composition and flow. We believe that these types of flares, which have limited flare vent gas streams, do not need to have the same type of ongoing monitoring requirements as those with more variable waste streams. Thus, we are proposing an option that owners or operators can use to demonstrate compliance with the operating requirements for HON and P&R I flares that are in dedicated service to a specific emission source, such as a transfer rack operation consistently loading the same material. We are proposing that owners or operators will need to submit an application for the use of this alternative compliance option. We are proposing that the application include a description of the system, characterization of the vent gases that could be routed to the flare based on a minimum of seven grab samples (14 daily grab samples for continuously operated flares), and specification of the net heating value that will be used for all flaring events (based on the minimum net heating value of the grab samples). In other words, for HON and P&R I flares that are in dedicated service, we are proposing that the minimum NHVvg determined from the grab samples could be used in the equation at 40 CFR 63.670(m)(1) for all flaring events to determine NHVcz. We are also proposing to allow engineering estimates to characterize the amount of gas flared and the amount of assist gas introduced into the system. For example, we believe that the use of fan curves to estimate air assist rates would be acceptable. We propose that flare owners or operators would use the net heating value determined from the initial sampling phase and measured or estimated flare vent gas and assist gas flow rates, if applicable, to demonstrate compliance with the standards. Refer to 40 CFR 63.108 and 40 CFR 63.670(j)(6) for these proposed provisions. Finally, for owners and operators that must comply with the continuous monitoring requirements, we are proposing additional clarifications and requirements at 40 CFR 63.108 when using a gas chromatograph or mass spectrometer for compositional analysis. We solicit comment on the proposed revisions related to flares in dedicated service.

g. Pressure-Assisted Multi-Point Flares

The EPA is also proposing to add requirements into the HON (but not P&R I) for pressure-assisted multi-point flares given that these types of APCD are used to control waste gases from processes subject to the HON during SSM. Pressure-assisted flares are conceptually similar, yet technically different in both design and operation compared to more traditional elevated flare tip designs (*e.g.,* steam-assisted, air-assisted, and non-assisted flare tips). Pressure-assisted flares operate by taking advantage of the pressure upstream of

the flare tip to create a condition whereby air is drawn into contact and mixed with high exit velocity flared gas, resulting in smokeless flare operation and emissions reductions at least equivalent to those of traditional flare types, if properly designed and operated. Pressure-assisted flares can be used in a single flare burner type layout or in staged arrays with many identical flare burners. These staged arrays can be elevated or at ground level; however, we are only aware of ground level staged array systems, that are commonly referred to as multi-point ground flares (MPGFs), at six facilities used as APCDs in the SOCMI source category that control emissions from HON processes.[127] MPGFs have multiple (*e.g.,* hundreds) flare burners at ground level. The flare burners in a MPGF are designed with a staging system that opens and closes staging valves according to gas pressure in the flare header such that the stages, and accompanying flare burners for those stages, are activated to control emissions as the flare vent gas flow and pressure increase in the flare header, or are deactivated as the flare vent gas flow and pressure decrease in the flare header. The flare burners in a MPGF are typically lit with a pilot flame system where the first burners on a stage are lit by the pilot flame and the flame propagates (*i.e.,* cross-lights) down the stage to the remaining burners on the stage (similar to how burners on a gas grill would light). The MPGF system is surrounded by a panel type fence to allow air in for combustion as well as to protect nearby workers from the radiant heat of the flare system.

MPGF are often used as secondary flares to control large emissions events that result during periods of SSM. With the elimination of the SSM exemption (see section III.E.1 of this preamble for additional discussion), proposing requirements for this unique flare type for HON flares is an important consideration given that some facilities currently use them as APCD. Based on our review of recently approved alternative means of emission limitation (AMEL) requests for MPGF and the underlying data analyses that supported those decisions (see section II.D of this preamble), MPGF can achieve reductions in VOC and organic HAP at least equivalent to those from traditional elevated flares; however, different operating requirements are needed for these flare types to ensure a high level of control is achieved given that the individual flare burners are designed to operate at high velocities (*i.e.,* up to sonic velocity). Important considerations for proper design and operation of MPGF center around the following: (1) Flare flame stability, (2) pilot flame presence and its interplay with proper cross-lighting, (3) operation of the MPGF with no visible emissions, and (4) monitoring of certain parameters of the MPGF and the vent gases it controls for purposes of compliance assurance.

In reviewing the initial MPGF AMEL requests by Dow Chemical and ExxonMobil (80 FR 8023–8030, February 13, 2015), the Agency noted two general conclusions from the test data supporting the AMEL requests that were consistent with 1985 studies[128] conducted by the EPA on pressure-assisted flares. The first general conclusion was that flare head design can influence the flame stability curve. The second general conclusion was that stable flare flames and high (greater than 98–99 percent) combustion and destruction efficiencies are attained when flares are operated within operating envelopes specific to each flare burner and gas mixture tested. Operation beyond the edge of the operating envelope can result in rapid flame de-stabilization and a decrease in combustion and destruction efficiencies. In reviewing all the available data in the MPGF AMEL docket (*i.e.,* Docket ID No. EPA–HQ–OAR–2014–0738), we found these two general observations were still valid conclusions. The data clearly show that for some test runs flare flameouts occurred, meaning the flares were not operated within the proper envelope to produce a stable flame. In reviewing these data, we observed that all flare flameouts occurred for the various burners/waste gas mixtures tested below an NHVcz of 800 Btu/scf. Thus, we selected a minimum NHVcz of 800 Btu/scf to ensure the MPGF at facilities in the SOCMI source category that control emissions from HON processes are operated within the proper envelope to produce a stable flame and achieve high destruction efficiencies at least equivalent to those as the underlying HON MACT standards. Above this level, no flare flameouts are observed, and high combustion/destruction efficiencies at least equivalent to those as the underlying HON MACT standards are achieved. Thus, to that end, we are proposing to not allow use of the ''feed forward'' calculation approach (discussed in section III.D.1.e of this preamble) to demonstrate compliance with the NHVcz limit of 800 Btu/scf.

Another unique characteristic of MPGF is that they may use a cross-lighting pilot flame system as a means of ignition to initially combust the waste gases sent to the flare burners on a particular staged array. Thus, we also reviewed the equipment-specific set-ups in the test data that allowed for successful cross-lighting of MPGF. Based on review of the data, it appears that one option would be for facilities to conduct performance demonstrations to demonstrate successful cross-lighting on a minimum of three burners (*i.e.,* as outlined in the Framework for Streamlining Approval of Future Pressure-Assisted MPGF AMEL Requests, 81 FR 23480, April 21, 2016). However, given the data before us in the MPGF AMEL docket, and rather than requiring facilities to conduct a performance demonstration, it appears that an equipment standard that sets an upper limit on the distance between burners of 6 feet will ensure a successful cross-lighting on a stage of burners in a MPGF.

Furthermore, in reviewing the site-specific AMEL standards that facilities are complying with for MPGF,[129] we believe these same site-specific standards, if applied to all MPGF in the specified subset, would demonstrate at least equivalent emissions reductions to the underlying HON MACT standards as well as demonstrate at least equivalent reductions to the new operational and monitoring requirements we are proposing for more traditional, elevated flare tips. Therefore, we are proposing at 40 CFR 63.108(i) that owners or operators of MPGF at facilities in the SOCMI source category that control emissions from HON processes: (1) Maintain an NHVcz greater than or equal to 800 Btu/scf over a short averaging period (*i.e.,* 15-minutes); (2) continuously monitor the NHVcz and flare vent gas flow rate; (3) continuously monitor for the presence of a pilot flame, and if cross-lighting is occurring on a particular stage of burners, ensuring that each stage of burners that cross-lights must have at least two pilots with at least one continuously lit and capable of igniting all regulated material

[127] One HON flare was reported as a pressure-assisted ground flare in response to our CAA section 114 request. Based on this information, in addition to information from alternative means of emission limitation requests (see Docket ID No. EPA–HQ–OAR–2014–0738), we estimate there are 6 pressure-assisted MPGF located in the SOCMI source category that control emissions from processes subject to the HON.

[128] Pohl, J. and N. Soelberg. 1985. Evaluation of the efficiency of industrial flares: Flare head design and gas composition. EPA–600/2–85–106. Prepared for U.S. EPA Office of Air Quality Planning and Standards.

[129] 80 FR 52426, August 31, 2015; 81 FR 23480, April 21, 2016; and 82 FR 27822, June 19, 2017.

that is routed to that stage of burners; (4) operate the MPGF with no visible emissions (except for 5 minutes during any 2 consecutive hours); (5) maintain a distance of no greater than 6 feet between any two burners on a stage of burners that use cross-lighting; [130] and (6) monitor to ensure the staging valves for each stage of the MPGF operate properly so that the flare will control vent gases within the range of the tested conditions based on the flare manufacturer's recommendations.

Finally, although we are unaware of any HON facilities that use multi-point elevated flares in the specified flare subset, we recognize that an owner or operator may elect to use this type of flare design in the future. Given the design similarities of a multi-point elevated flare when compared to a MPGF (*i.e.,* each flare type uses pressure-assisted burners with staged arrays), we determined that our analyses of the test data (including our review of approved AMEL requests) related to MPGF that control waste gases could also apply to multi-point elevated flares in the specified subset that combust waste gases. Therefore, we are proposing that owners and operators of multi-point elevated flares meet the same requirements that we are proposing for MPGF. In other words, the proposed requirements discussed in this section of the preamble would apply to all pressure-assisted multi-point flares (*i.e.,* MPGF and multi-point elevated flares) at facilities in the SOCMI source category that control emissions from HON processes. We are soliciting comment on whether this approach is appropriate, and whether test data are available for multi-point elevated flares that control waste gases from HON facilities. Also, given that some owners and operators of CMPUs are currently operating under an approved AMEL, and these owners and operators are likely to have already installed more sophisticated equipment (*e.g.,* a gas chromatograph) than what is required to comply with these proposed requirements for pressure-assisted multi-point flares, we are proposing that pressure-assisted multi-point flares subject to an approved AMEL may continue to comply with the approved AMEL in lieu of these proposed requirements for pressure-assisted multi-point flares. We also are soliciting comment on whether we should extend allowance of this option to P&R I facilities, as many sources are collocated with HON and may use this same type of control device as a backup. As we are currently unaware of any P&R I facilities using pressure-assisted multi-point flares, we solicit comment whether test data are available for these flare types that control waste gases from P&R I processes.

h. Impacts of the Proposed Flare Operating and Monitoring Requirements

The EPA expects that the newly proposed requirements for flares used as APCDs in the SOCMI source category discussed in this section will affect all flares at HON and P&R I processes. Based on facility responses to our CAA section 114 request, we estimate that there are 345 flares of traditional elevated flare tip designs (*e.g.,* steam-assisted, air-assisted, and non-assisted flare tips) operating at HON CMPUs that receive flare vent gas flow on a regular basis (*i.e.,* other than during periods of SSM). We estimate that there are 31 flares of traditional elevated flare tip designs operating at P&R I EPPUs that receive flare vent gas flow on a regular basis. Also, based on facility responses to our CAA section 114 request and information received from AMEL requests (see section II.D of this preamble), we estimate there are six pressure-assisted MPGF used to control waste gases from processes subject to the HON during SSM. Costs were estimated for each flare for a given facility, considering current monitoring systems already installed on each individual flare. Given that the same type of equipment is used for flares in the SOCMI source category and for the petroleum refinery sector, costs for any additional monitoring systems needed were estimated based on installed costs received from petroleum refineries and, if installed costs were unavailable, costs were estimated based on vendor-purchased equipment. The baseline emission estimate and the emission reductions achieved by the proposed rule were estimated based on current vent gas and steam flow data submitted by industry representatives. The results of the impact estimates are summarized in Table 28 of this preamble for Flares in the SOCMI Source Category that control emissions from HON processes including P&R I & II flares collocated with HON processes. The results of the impact estimates are summarized in Table 29 of this preamble for Flares in the SOCMI source category that control emissions from P&R I processes. We note that the requirements for HON and P&R I flares that we are proposing will ensure compliance with the MACT standards in the HON and P&R I when flares are used as an APCD. Because we are not changing the underlying MACT standards in the HON and P&R I, we did not include any of the estimated excess emissions from flares in the summary of total estimated emissions reductions for this action. However, we estimate that the proposed operational and monitoring requirements have the potential to reduce excess emissions from HON flares (including from P&R I flares collocated with HON processes) by approximately 4,717 tpy of HAP and 19,325 tpy of VOC; and from P&R I flares (not collocated with HON processes) by approximately 141 tpy of HAP and 564 tpy of VOC. The VOC compounds are non-methane, non-ethane total hydrocarbons. According to the emissions inventory file we used to assess residual risk (see section II.F.1 of this preamble), there are approximately 80 individual HAP compounds included in the emission inventory for flares, but many of these are emitted in trace quantities. Almost half of the HAP emissions from flares are attributable to hexane, benzene, and methanol, followed by 1,3-butadiene and vinyl acetate. For more detail on the impact estimates, see the document titled *Control Option Impacts for Flares Located in the SOCMI Source Category that Control Emissions from Processes Subject to HON and for Flares that Control Emissions from Processes Subject to Group I and Group II Polymers and Resins NESHAPs,* which is available in the docket for this rulemaking. As previously mentioned in section III.C.3.b of this preamble, we are also proposing these same flare operating and monitoring requirements for NSPS subpart IIIa, NNNa, and RRRa under CAA section 111(b)(1)(B).

[130] We are proposing that this burner-to-burner distance is the distance when measured from the center of one burner to the next burner.

TABLE 28—NATIONWIDE COST IMPACTS FOR FLARES IN THE SOCMI SOURCE CATEGORY THAT CONTROL EMISSIONS FROM HON PROCESSES INCLUDING P&R I FLARES COLLOCATED WITH HON PROCESSES

Control description	Total capital investment (million $)	Total annualized costs (million $/yr)
Flare Operational and Monitoring Requirements	323.1	67.8
Work Practice Standards for Flares Operating Above Their Smokeless Capacity	3.34	0.79
Total	326.4	68.7

TABLE 29—NATIONWIDE COST IMPACTS FOR FLARES IN THE SOCMI SOURCE CATEGORY THAT CONTROL EMISSIONS FROM P&R I PROCESSES

Control description	Total capital investment (million $)	Total annualized costs (million $/yr)
Flare Operational and Monitoring Requirements	6.93	1.46
Work Practice Standards for Flares Operating Above Their Smokeless Capacity	0.08	0.02
Total	7.01	1.48

2. PRDs

The HON defines several terms applicable to process vents at 40 CFR 63.101 and 40 CFR 63.107; similarly, P&R I defines several terms applicable to process vents at 40 CFR 63.482. The current HON definition of ''process vent'' excludes a ''relief valve discharge,'' (see 40 CFR 63.107(h)(1)) and the term ''process vent'' in P&R I at 40 CFR 63.482 excludes ''pressure releases.'' Instead, these MACT standards in the HON and P&R I recognize HON relief valve discharges and P&R I pressure releases to be the result of malfunctions. The acronym ''PRD'' means pressure relief device and is common vernacular to describe the variety of devices regulated as pressure relief valves (to provide clarity, see the end of this section for our proposed revision to the definition of ''pressure relief device'' for the HON and P&R I, our proposed definition of ''relief valve'' for the HON and P&R I, and our proposal to add a definition in P&R II for ''pressure relief device''). PRDs are designed to remain closed during normal operation. Typically, the Agency considers PRD releases as the result of an overpressure in the system caused by operator error, a malfunction such as a power failure or equipment failure, or other unexpected cause that results in immediate venting of gas from process equipment to avoid safety hazards or equipment damage. The discussion that follows within this section of the preamble primarily focuses on the HON and P&R I because any release of HAP to the atmosphere from a P&R II PRD should already be accounted for when determining compliance with the production-based emission rate MACT standard (*e.g.,* pounds HAP per million pounds BLR or WSR produced).

The HON and P&R I currently regulate PRDs when they are seated through equipment leak provisions that are applied only after the pressure release event occurs (*i.e.,* conduct monitoring with EPA Method 21 of appendix A–7 to 40 CFR part 60 after each pressure release using a leak definition of 500 ppm); however, these provisions do not apply to an emissions release from a PRD. In addition, the HON and P&R I follow the EPA's pre-2008 practice of exempting SSM events from otherwise applicable emission standards. Consequently, with PRD releases treated as unplanned, nonroutine, and the result of malfunctions, the HON and P&R I did not restrict PRD releases to the atmosphere but instead treated them in the same manner as malfunctions subject to the SSM exemption provision. In *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the Court determined that the SSM exemption violates the CAA. We have previously explained the relationship between this ruling and PRDs in other rulemakings revising section 112 standards (see, *e.g.,* 85 FR 6067, February 4, 2020, and 85 FR 40386, July 6, 2020). Section III.E.1 of this preamble contains additional discussions on the removal of the SSM exemption provision for the SOCMI and P&R I source categories. As a result, we evaluated the MACT standards in the HON and P&R I for PRD HAP releases to the atmosphere to ensure a standard continuously applies during these malfunction events, consistent with the *Sierra Club* decision.

CAA section 112(d)(1) specifies that the EPA may ''distinguish among classes, types, and sizes of sources'' when establishing standards. (In establishing standards under CAA section 112(d), the EPA may ''distinguish among classes, types, and sizes of sources within a category or sub-category.'' CAA section 112(d)(1). See *Sierra Club* v. *EPA,* 479 F.3d 875, 885 (D.C. Cir. 2007)). We are proposing two subcategories of PRDs for the MACT standard in the HON and P&R I to distinguish between classes of PRDs: (1) PRDs designed to vent through a closed-vent system to a control device or to a process, fuel gas system, or drain system (referred to as PRDs that vent to a control system); and (2) PRDs designed to vent to the atmosphere, if a release were to occur. We are proposing to subcategorize PRDs by class because of design differences between the numerous PRDs at HON and P&R I facilities that vent to a control system and that vent to the atmosphere. Currently, HON and P&R I facilities are required to evaluate PRDs as part of their risk management and process safety management programs. When implementing these programs, facilities identify PRDs that they intend to control as compared to those they elect not to control (and that have the potential to vent to the atmosphere if a release were to occur). Facilities do not control certain PRDs because of technical or site-specific safety considerations, such as PRDs that release chemicals that could be incompatible with vent streams in downstream controls.

We evaluated each subcategory of PRDs separately to ensure that a standard continuously applies. Essentially, PRDs that vent to a control system are already complying with the process vent standards and are, thus, presumably, already appropriately controlled. However, PRDs that vent to atmosphere do not meet the current continuous process vent standards. Therefore, we examined how to regulate PRDs that vent to atmosphere under CAA section 112(d)(2) and (3). CAA section 112(h)(1) states that the Administrator may prescribe a work practice standard or other requirements, consistent with the provisions of CAA sections 112(d) or (f), in those cases where, in the judgment of the Administrator, it is not feasible to enforce an emission standard. CAA section 112(h)(2)(B) further defines the term ''not feasible'' in this context to apply when ''the application of measurement technology to a particular class of sources is not practicable due to technological and economic limitations.'' As detailed here, we identified as the MACT level of control work practice standards to regulate PRDs that vent to atmosphere under CAA section 112(h), and are proposing such work practice standards at proposed 40 CFR 63.165(e) (for HON) and proposed 40 CFR 63.502(a)(1) and (a)(2) (which references 40 CFR 63.165, for P&R I) that are intended to reduce the number of PRD releases and will incentivize owners or operators to eliminate the causes of PRD releases to the atmosphere.

No HON or P&R I facility is subject to numeric emission limits for PRDs that vent to the atmosphere.[131] Further, we do not believe it is appropriate to subject PRDs that vent to the atmosphere to numeric emission limits due to technological and economical limitations that make it impracticable to measure emissions from such PRDs. CAA section 112(h)(1) states that the EPA may prescribe a work practice standard or other requirement, consistent with the provisions of CAA sections 112(d) or (f), in those cases where, in the judgment of the Administrator, it is not feasible to enforce an emission standard. CAA section 112(h)(2)(B) further defines the term ''not feasible'' in this context as meaning that ''the application of measurement technology to a particular class of sources is not practicable due to technological and economic limitations.'' We consider it appropriate to establish a work practice standard for PRDs that vent to atmosphere as provided in CAA section 112(h), because the application of a measurement methodology for PRDs that vent to atmosphere is not practicable due to technological and economic limitations. First, it is not practicable to use a measurement methodology for PRD releases that vent to atmosphere. PRDs are designed to remain closed during normal operations and release emissions only during nonroutine and unplanned events, and the venting time can be very short and may vary widely in composition and flow rate. These unique event characteristics make it infeasible to collect a grab sample of the gases when a PRD release occurs, and a single grab sample would also likely not account for potential variation in vent gas composition. Additionally, it would not be cost-effective to construct an appropriate conveyance and install and operate continuous monitoring systems for each individual PRD that vents to atmosphere in order to attempt to quantitatively measure a release event that may occur only a few times in a 3-year period. (See *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 664–67 (2016).) Further, we have not identified any available, technically feasible CEMS that can accurately determine a mass release quantity of VOC or HAP given the flow, composition, and composition variability of potential PRD releases that vent to the atmosphere from CMPUs or EPPUs. Rather, we have identified only monitoring systems capable of alerting an owner or operator when a PRD release occurs. Consequently, we have concluded that it is appropriate to establish a work practice standard for PRDs that vent to the atmosphere as provided in CAA section 112(h).

We also reviewed information about HON and P&R I facilities to determine how the best performers are minimizing emissions from PRDs that vent to the atmosphere. We first reviewed the requirements in the EPA's Chemical Accident Prevention Provisions (40 CFR part 68) and Occupational Safety and Health Administration's (OSHA) Process Safety Management rule (29 CFR 1910.119). These rules focus on planning for and minimizing or preventing scenarios which would result in releases of chemicals. For example, as stated in Appendix C to the OSHA rule, ''Process safety management is the proactive identification, evaluation and mitigation or prevention of chemical releases that could occur as a result of failures in process, procedures or equipment.'' The rules are applicable to any equipment in the process, and relief valves are identified in each rule as an applicable source to evaluate. The EPA and OSHA rules have similar requirements, except that the applicability determinations are unique to each rule. Owners or operators are subject to the EPA's Chemical Accident Prevention Provisions at 40 CFR part 68 if a process has more than a threshold quantity of a regulated substance. Regulated substances and their thresholds are listed at 40 CFR 68.130. Owners or operators are subject to OSHA's Process Safety Management rule at 29 CFR 1910.119 if a process involves either a chemical that is at or above specified threshold quantities (listed in appendix A to 29 CFR 1910.119) or a Category 1 flammable gas (as defined in 29 CFR 1910.1200(c)) or flammable liquid with a flashpoint below 100 degrees Fahrenheit. HON and P&R I facilities may be subject to the Chemical Accident Prevention Provisions rule, as identified in their title V permit (40 CFR 68.215 requires permits to list part 68 as an applicable requirement, if subject). As a result, we further reviewed this rule for consideration in developing the work practice standard.

The EPA's Chemical Accident Prevention Provisions require a prevention program. Facilities subject to the HON or P&R I would fall under prevention program 3. Prevention program 3 includes the following: Documentation of process safety information, conducting a hazard analysis, documentation of operating procedures, employee training, on-going maintenance, and incident investigations. The process safety information documented must include information pertaining to the hazards of the regulated substances in the process, the technology of the process, and the process equipment (including relief valves). When conducting the hazard analysis, facilities must identify, evaluate, and control the hazards in the process; controls may consider the application of detection methodologies (*e.g.,* process monitoring and control instrumentation) to provide early warning of releases. The operating procedures must address multiple operating scenarios (*e.g.,* normal operations, startup, emergency shutdown) and provide instructions for safely conducting process activities. Conducting the hazard analysis and

[131] As previously mentioned, P&R II is different from the HON and P&R I because P&R II defines a process vent as a ''a point of emission from a unit operation. Typical process vents include condenser vents, vacuum pumps, steam ejectors, and atmospheric vents from reactors and other process vessels.'' As such, P&R II does not exclude PRD releases from its production-based emission rate MACT standard.

documenting operating procedures are similar to prevention measures, discussed below, though we note a specific number of measures or controls is not specified for the program 3 prevention program. Incident investigations must document the factors that contributed to an incident and any resolutions and corrective actions (incident investigations are consistent with root cause analysis and corrective action, discussed below). Facilities are also required to document this information in a Risk Management Plan that must be updated at least every 5 years.

Next, we considered that some companies operating HON and P&R I facilities also own and operate petroleum refineries and may have established company-wide best practices as a result of specific state and federal requirements. For example, petroleum refineries and chemical plants located in certain counties in California are subject to and complying with specific requirements for PRDs such as the Bay Area Air Quality Management District (BAAQMD) Rule 8–28–304 and South Coast Air Quality Management District (SCAQMD) Rule 1173. The BAAQMD rule requires implementation of three prevention measures, and both rules require root cause analysis and corrective action for certain PRDs. These rules also formed the basis of the work practice standards promulgated at 40 CFR 63.648(j) for PRD releases at petroleum refineries in the Petroleum Refinery Sector RTR performed by the EPA (80 FR 75178, December 1, 2015).

Considering our review of the EPA's Chemical Accident Prevention Provisions and company-wide best practices that HON and P&R I facilities may have implemented, we expect that the best performing HON and P&R I facilities have implemented a program for PRDs that vent to the atmosphere that consists of using at least three prevention measures and performing root cause analysis and corrective action in the event that a PRD does release emissions directly to the atmosphere. In fact, we confirmed this to be true for HON facilities based on facility responses to our CAA section 114 request. We used this information as the basis of the work practice standards that we are proposing at 40 CFR 63.165(e) (for HON) and 40 CFR 63.502(a)(1) and (2) (which references 40 CFR 63.165, for P&R I). Examples of prevention measures include the following: Flow indicators, level indicators, temperature indicators, pressure indicators, routine inspection and maintenance programs, operator training, inherently safer designs, safety instrumentation systems, deluge systems, and staged relief systems where the initial PRD discharges to a control system.

We are also proposing a limit on the number of PRD releases that can take place within a 3-yr period. Any PRD releases in excess of the limit would result in a deviation from the work practice standard for PRDs that vent to the atmosphere. We believe setting criteria to determine a deviation is necessary for the work practice to be effective. We considered limits on the number of PRD releases in both 3- and 5-year periods. Based on a Monte Carlo analysis of random rare events (as conducted for the Petroleum Refinery Sector rule [132]), we note that it is quite likely to have two or three events in a 5-year period when a long time horizon (*e.g.,* 20 years) is considered. Therefore, we are proposing to limit the number of PRD releases from a single PRD to either one, two, or three (depending on the root cause) in a 3-year period as the basis of a deviation from the work practice standard. We are proposing that it is a deviation from the work practice standard if a single PRD that vents to atmosphere has two releases within a 3-year period due to the same root cause. We believe that this provision will help ensure that root cause/corrective actions are conducted effectively. Otherwise, we are proposing that it is a deviation from the work practice standard if a single PRD that vents to the atmosphere has three releases within a 3-year period for any reason. In addition, we are proposing that any PRD release for which the root cause was determined to be operator error or poor maintenance is a deviation from the work practice standard. Refer to proposed 40 CFR 63.165(e)(3)(v) (for HON) and proposed 40 CFR 63.502(a)(1) and (2) (which references 40 CFR 63.165, for P&R I) for these proposed provisions. Based on our cost assumptions, the nationwide capital cost for complying with the PRD work practice requirements for the HON is $13.7 million and the annualized capital costs is $7.1 million; and for P&R I is $0.41 million and the annualized capital costs is $0.12 million.

In addition, we believe that it is appropriate to exclude certain types of PRDs that have very low/no potential to emit based on their type of service, size, and/or pressure from the proposed work practice standard for PRD releases that vent to atmosphere, provided they are subject to other continuously applicable emission standards. Both the Chemical Accident Prevention Provisions and the California petroleum refinery PRD rules also exempt or impose simpler requirements for certain PRDs. We are proposing at 40 CFR 63.165(e)(5) (for HON) and 40 CFR 63.502(a)(1) and (2) (which references 40 CFR 63.165, for P&R I) that the following types of PRDs would not be subject to the work practice standard for PRDs that vent to the atmosphere, but instead would be covered by other continuously applicable emission standards:[133] (1) PRDs in heavy liquid service; (2) PRDs that are designed solely to release due to liquid thermal expansion; (3) PRDs on mobile equipment, and (4) pilot-operated and balanced bellows PRDs if the primary release valve associated with the PRD is vented through a closed vent system to a control device or back into the process, to the fuel gas system, or to a drain system. Each of the types of PRDs that we are proposing would not be subject to the work practice standard are discussed in greater detail here. With regard to PRDs in heavy liquid service, any HAP release to the atmosphere from a PRD in heavy liquid service would have a visual indication of a leak and any repairs to the valve would have to be further inspected and, if necessary, repaired under the existing equipment leak provisions. Therefore, we are proposing that PRDs in heavy liquid service need not be additionally subject to the work practice standard. In addition, we are proposing that PRDs designed solely to release due to liquid thermal expansion would not be subject to the work practice standard. We expect that releases from these thermal relief valves would be insignificant. Finally, we are also proposing that pilot-operated PRDs (where emissions can be released to the atmosphere through a pilot discharge vent) and balanced bellow PRDs (where emissions can be released to the atmosphere through a bonnet vent) would not be subject to the work practice standard, if the primary release valve associated with the pilot-operated or balanced bellows PRD is vented through a closed vent system to a control device or back into the process, to the fuel gas system, or to a drain system. Pilot-operated and balanced bellows PRDs are primarily used for pressure relief when the back pressure of the discharge vent may be high or variable. Conventional PRDs act on a differential pressure between the process gas and the discharge vent. If the discharge vent pressure increases, the vessel pressure at which the PRD will open increases, potentially leading

[132] See 80 FR 75217, December 1, 2015.

[133] Pursuant to 40 CFR 63.165(a), each pressure relief device in organic HAP gas or vapor service must continue to be operated with an instrument reading of less than 500 ppm above background.

to vessel over-pressurization that could cause vessel failure. Balanced bellows PRDs use a bellow to shield the pressure relief stem and top portion of the valve seat from the discharge vent pressure. A balanced bellows PRD will not discharge gas to the atmosphere during a release event, except for leaks through the bonnet vent due to bellows failure or fatigue. Pilot-operated PRDs use a small pilot safety valve that discharges to the atmosphere to effect actuation of the primary valve or piston, which then discharges to a control system. Balanced bellows or pilot operated PRDs are considered a reasonable and necessary means to safely control the primary PRD release.

For all PRDs in organic HAP service, owners or operators would still be required to comply with the LDAR provisions, as they are currently applicable. Therefore, all PRDs that vent to the atmosphere would still perform LDAR to ensure the PRD properly reseats if a release does occur, and PRDs that vent to control systems would still be exempt from LDAR requirements given that if a release were to occur from this specific class of PRDs, it would vent to a closed vent system and control device.

Finally, to ensure compliance with the proposed work practice standard for PRDs that vent to the atmosphere, we are also proposing at 40 CFR 63.165(e)(3) (for HON) and 40 CFR 63.502(a)(1) and (2) (which references 40 CFR 63.165, for P&R I) that sources monitor these PRDs using a system that is capable of identifying and recording the time and duration of each pressure release and of notifying operators that a pressure release has occurred. Pressure release events from PRDs that vent to the atmosphere have the potential to emit large quantities of HAP. When a pressure release occurs, it is important to identify and mitigate it as quickly as possible. For purposes of estimating the costs of this requirement, we assumed that operators would install electronic monitors on PRDs that vent to atmosphere to identify and record the time and duration of each pressure release. However, we are proposing to allow owners and operators to use a range of methods to satisfy these requirements, including the use of a parameter monitoring system (that may already be in place) on the process operating pressure that is sufficient to indicate that a pressure release has occurred as well as record the time and duration of that pressure release. Based on our cost assumptions, the nationwide capital cost of installing these electronic monitors for the HON is $3.1 million and the annualized capital costs are $0.41 million; and for P&R I is $0.09 million and the annualized capital costs are $0.01 million.

We also considered requiring all PRDs to be vented to a control device as a beyond-the-floor requirement. While this would provide additional emission reductions beyond those we are establishing as the MACT floor, these reductions come at significant costs. For example, the EPA estimated that the capital cost for controlling MON PRDs ranged from $2,540 million to $5,070 million, and the annualized cost ranged from $330 million to $660 million; and the incremental cost effectiveness for requiring control of all MON PRDs that vent to the atmosphere compared to the requirements described above exceeded $80 million per ton of HAP reduced (see 84 FR 69182, December 17, 2019). Consequently, we conclude that this is not a cost-effective option.

The EPA is also proposing a requirement that any future installed pilot-operated PRDs be the non-flowing type. As previously noted, under CAA section 112(d)(1), the EPA may ''distinguish among classes, types, and sizes of sources'' when establishing standards. There are two designs of pilot-operated PRDs: flowing and non-flowing. When a flowing pilot-operated PRD is actuated, the pilot discharge vent continuously releases emissions; however, when a non-flowing pilot-operated PRD is actuated, the pilot discharge vent does not vent continuously. Although we expect pilot discharge vent emissions to be minimal for both designs, limiting the future use of flowing pilot-operated PRDs is warranted to prevent continuous release of emissions. Therefore, we are proposing at 40 CFR 63.165(e)(8) (for HON) and 40 CFR 63.502(a)(1) and (2) (which references 40 CFR 63.165, for P&R I) to require future installation and operation of non-flowing pilot-operated PRDs at all affected sources.

We are also proposing at 40 CFR 63.101 (for HON) and 40 CFR 63.482 (for P&R I) to clarify the definitions of ''pressure release,'' ''pressure relief device,'' and ''relief valve.'' We are proposing to define ''pressure release'' as the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device. This release can be one release or a series of releases over a short time period. We are proposing to define ''pressure relief device'' as a valve, rupture disk, or similar device used only to release an unplanned, nonroutine discharge of gas from process equipment in order to avoid safety hazards or equipment damage. A pressure relief device discharge can result from an operator error, a malfunction such as a power failure or equipment failure, or other unexpected cause. Such devices include conventional, spring-actuated relief valves, balanced bellows relief valves, pilot-operated relief valves, rupture disks, and breaking, buckling, or shearing pin devices. We are proposing to define ''relief valve'' as a type of pressure relief device that is designed to re-close after the pressure relief. For clarity, we are also proposing for P&R II the same definition of ''pressure relief device'' that we are proposing for the HON and P&R I because P&R II currently does not define this term. Although we are not proposing for P&R II the same work practice standard for PRDs that vent to the atmosphere that we are proposing for the HON and P&R I (because as explained earlier in this section of the preamble any release of HAP to the atmosphere from a P&R II pressure relief device should already be accounted for when determining compliance with the production-based emission rate MACT standard), we are proposing at 40 CFR 63.527(f) and 40 CFR 63.528(a)(6), that owners and operators keep records and report the start and end time and date of each pressure release to the atmosphere, an estimate of the mass quantity in pounds of each organic HAP released, as well as any data, assumptions, and calculations used to estimate of the mass quantity of each organic HAP released during the event. These proposed records and reports for P&R II will assist stakeholders in determining compliance with the production-based emission rate MACT standard.

We solicit comment on all of the proposed revisions for PRDs. See the document titled *Review of Regulatory Alternatives for Certain Vent Streams in the SOCMI Source Category that are Associated with Processes Subject to HON and Processes Subject to Group I and Group II Polymers and Resins NESHAPs,* in the docket for this rulemaking for details on the assumptions and methodologies used in this analysis.

3. Closed Vent System Containing Bypass Lines

For a closed-vent system containing bypass lines that can divert the stream away from the APCD to the atmosphere, the HON and P&R I require the owner or operator to either: (1) Install, maintain, and operate a continuous parametric monitoring system for flow on the bypass line that is capable of detecting whether a vent stream flow is present at least once every 15 minutes or (2) secure the bypass line valve in the

non-diverting position with a car-seal or a lock-and-key type configuration. Under option (2), the owner or operator is also required to inspect the seal or closure mechanism at least once per month to verify the valve is maintained in the non-diverting position (*e.g.,* see 40 CFR 63.114(d)(2) for more details). To ensure standards apply to HON and P&R I emission sources at all times, we are proposing at 40 CFR 63.114(d)(3), 40 CFR 63.127(d)(3), 40 CFR 63.148(f)(4), and 40 CFR 63.172(j)(4) (for HON), and 40 CFR 63.485(x), 40 CFR 63.489(d)(3), and 40 CFR 63.502(a)(2) (for P&R I) that an owner or operator may not bypass the APCD at any time, that a bypass is a violation (see proposed 40 CFR 63.118(a)(5) and (f)(7), 40 CFR 63.130(a)(2)(iv), (b)(3), and (d)(7), 40 CFR 63.148(i)(3)(iii) and (j)(4), Tables 3, 7, and 20 to 40 CFR 63, subpart G, 40 CFR 63.181(g)(3)(iii), and 40 CFR 63.182(d)(xix) (for HON), and 40 CFR 63.485(x), 40 CFR 63.489(d)(3), and 40 CFR 63.502(a)(2) (for P&R I)), and owners and operators must estimate and report the quantity of organic HAP released. We are proposing this revision because bypassing an APCD could result in a release of regulated organic HAP to the atmosphere and to be consistent with *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), where the Court determined that standards under CAA section 112(d) must provide for compliance at all times. These requirements are consistent with CAA section 112(d) controls and reflect the MACT floor. We did not identify any additional options beyond this (*i.e.,* beyond-the-floor options) for minimizing emissions from closed-vent systems that are used to comply with the emission standards. We are also proposing that the use of a cap, blind flange, plug, or second valve on an OEL (following the requirements specified in 40 CFR 60.482–6(a)(2), (b), and (c) or following requirements codified in another regulation that are the same as 40 CFR 60.482–6(a)(2), (b), and (c)) is sufficient to prevent a bypass. We solicit comment on these proposed revisions.

4. Maintenance Activities

The EPA is proposing that emission limits apply at all times consistent with *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008). We recognize that this proposed change for vent streams that are periodically discharged will affect certain maintenance activities such as those that require equipment openings, and we consider maintenance activities a separate class of startup and shutdown emissions because there must be a point in time when the equipment can be opened, and any remaining emissions are vented to the atmosphere. We also acknowledge that it would require a significant effort to identify and characterize each of these potential release points (*e.g.,* for permitting purposes). CAA section 112(h)(1) states that the Administrator may prescribe a work practice standard or other requirements, consistent with the provisions of CAA sections 112(d) or (f), in those cases where, in the judgment of the Administrator, it is not feasible to enforce an emission standard. We are proposing work practices instead of numeric emission limits for maintenance activities because it is ''not feasible to prescribe or enforce an emission standard'' for these emissions. Maintenance activities are not ''emitted through a conveyance designed and constructed to emit or capture such pollutant'' (see CAA section 112(h)(2)(A)) and it is not possible to characterize each of these potential release points. The discussion that follows within this section of the preamble primarily focuses on the HON and P&R I because any release to the atmosphere from P&R II maintenance activities should already be accounted for when determining compliance with the production-based emission rate MACT standard (*e.g.,* pounds HAP per million pounds BLR or WSR produced).

a. Equipment Openings (Excluding Storage Vessel Degassing)

We reviewed state permit conditions and determined the best performers' permits specify that they meet certain conditions before they open equipment to the atmosphere. The conditions include thresholds regarding the LEL and the mass of gas that may be emitted. These requirements are consistent with CAA section 112(d) controls and reflect the level of performance analogous to a MACT floor. Therefore, we are proposing a work practice standard at 40 CFR 63.113(k)(1)(i) (for HON), and at 40 CFR 63.485(x) and 40 CFR 63.487(i)(1)(i) (for P&R I), that prior to opening process equipment to the atmosphere during maintenance events, the equipment first be drained and purged to a closed system so that the hydrocarbon content is less than or equal to 10 percent of the LEL. For those situations where 10-percent LEL cannot be demonstrated, we are proposing at 40 CFR 63.113(k)(1)(ii) (for HON), and at 40 CFR 63.485(x) and 40 CFR 63.487(i)(1)(ii) (for P&R I), that the equipment may be opened and vented to the atmosphere if the pressure is less than or equal to 5 psig, provided there is no active purging of the equipment to the atmosphere until the LEL criterion is met. We are proposing this 5 psig threshold to acknowledge that a certain minimum pressure must exist for the flare header system (or other similar control system) to operate properly. We are also proposing at 40 CFR 63.113(k)(1)(iii) (for HON), and at 40 CFR 63.485(x) and 40 CFR 63.487(i)(1)(iii) (for P&R I), that equipment may be opened when there is less than 50 pounds of VOC that may be emitted to the atmosphere.

We also acknowledge that installing a blind flange to prepare equipment for maintenance may be necessary and by doing so, the owner or operator may not be able to meet the proposed maintenance vent conditions mentioned above (*e.g.,* a valve used to isolate the equipment will not seat fully, so organic material may continually leak into the isolated equipment). To limit the emissions during the blind flange installation, we are proposing at 40 CFR 63.113(k)(1)(iv) (for HON), and at 40 CFR 63.485(x) and 40 CFR 63.487(i)(1)(iv) (for P&R I), depressurizing the equipment to 2 psig or less prior to equipment opening and maintaining pressure of the equipment where purge gas enters the equipment at or below 2 psig during the blind flange installation. The low allowable pressure limit will reduce the amount of process gas that will be released during the initial equipment opening, and the ongoing 2 psig pressure requirement will limit the purge gas rate. Together, these proposed provisions will limit the emissions during blind flange installation and will result in comparable emissions allowed under the proposed maintenance vent conditions mentioned above. We expect these situations to be rare and that the owner or operator would remedy the situation as soon as practical (*e.g.,* replace the isolation valve or valve seat during the next turnaround in the example provided above). Therefore, we are only proposing that this alternative maintenance vent limit be used under those situations where the proposed primary limits (*i.e.,* hydrocarbon content is less than or equal to 10 percent of the LEL, pressure is less than or equal to 5 psig, or VOC is less than 50 pounds) are not achievable and blinding of the equipment is necessary. We did not identify any additional options beyond those identified above (*i.e.,* beyond-the-floor options) for controlling emissions from equipment openings.

We expect that all HON and P&R I facilities already have standard procedures in place when performing equipment openings (at the very least for safety reasons). As such, the only costs incurred are for recordkeeping

after each non-conforming event. We are proposing that owners or operators document each circumstance under which the alternative maintenance vent limit is used, providing an explanation as to why other criteria could not be met prior to equipment blinding and an estimate of the emissions that occurred during the equipment blinding process. For the HON, we calculated the annual costs to be $94,250 per year. For P&R I, we calculated the annual costs to be $8,650 per year. We solicit comment on the proposed revisions related to maintenance activities. For additional details and discussion, see the document titled *Review of Regulatory Alternatives for Certain Vent Streams in the SOCMI Source Category that are Associated with Processes Subject to HON and Processes Subject to Group I and Group II Polymers and Resins NESHAPs,* which is available in the docket for this rulemaking. As previously mentioned in section III.C.3.b of this preamble, we are also proposing these same maintenance vent standards for NSPS subpart IIIa, NNNa, and RRRa under CAA section 111(b)(1)(B).

b. Storage Vessel Degassing

With the proposed removal of SSM requirements, a standard specific to storage vessel degassing does not exist when storage vessels are using control devices to comply with the requirements in 40 CFR 63.119(a)(2) (for HON) and 40 CFR 63.484(a) (for P&R I, which references 40 CFR 63.119). We acknowledge that storage vessel degassing is similar to maintenance vents (*e.g.,* equipment openings) and that there must be a point in time when the storage vessel can be opened and any emissions vented to the atmosphere. We reviewed available data to determine how the best performers are controlling storage vessel degassing emissions.

We are aware of three regulations regarding storage vessel degassing, two in the state of Texas and the third for the SCAQMD in California. Texas has degassing provisions in the TAC [134] and through permit conditions,[135] while Rule 1149 contains the SCAQMD degassing provisions.[136] The TAC requirements are the least stringent and require control of degassing emissions until the vapor space concentration is less than 35,000 ppmv as methane or 50 percent of the LEL. The Texas permit conditions require control of degassing emissions until the vapor space concentration is less than 10 percent of the LEL or until the VOC concentration is less than 10,000 ppmv, and SCAQMD Rule 1149 requires control of degassing emissions until the vapor space concentration is less than 5,000 ppmv as methane. The Texas permit conditions requiring compliance with 10 percent of the LEL and SCAQMD Rule 1149 control requirements are considered equivalent because 5,000 ppmv as methane equals 10 percent of the LEL for methane.

HON and P&R I facilities located in Texas are subject to the permit conditions, but no HON or P&R I facility is subject to the SCAQMD rule. Of the 207 currently operating HON facilities, 78 are in Texas (four of which are collocated with P&R I processes). Of the 19 currently operating P&R I facilities, 6 are in Texas (including the four collocated with HON processes). Therefore, the Texas permit conditions relying on storage vessel degassing until 10 percent of the LEL is achieved reflect what the best performers have implemented for storage vessel degassing, and we considered this information as the MACT floor for both new and existing HON and P&R I sources.

We reviewed Texas permit condition 6 (applicable to floating roof storage vessels) and permit condition 7 (applicable to fixed roof storage vessels) for key information that could be implemented to form the basis of a standard for storage vessel degassing. The Texas permit conditions require control of degassing emissions for floating roof and fixed roof storage vessels until the vapor space concentration is less than 10 percent of the LEL. The permit conditions also specify that facilities can also degas a storage vessel until they meet a VOC concentration of 10,000 ppmv, but we do not consider 10,000 ppmv to be equivalent to or as stringent as the compliance option to meet 10 percent of the LEL and are not including this as a compliance option. We also do not expect the best performers would be using this concentration for compliance because the Texas permit conditions allow facilities to calibrate their LEL monitor using methane. Storage vessels may be vented to the atmosphere once the storage vessel degassing concentration threshold is met (*i.e.,* less than 10 percent of the LEL) and all standing liquid has been removed from the vessel to the extent practicable. We are proposing that these requirements are considered MACT floors for both new and existing HON and P&R I sources; therefore, we are proposing these requirements at 40 CFR 63.119(a)(6) (for HON) and 40 CFR 63.484(a) and (t) (which references 40 CFR 63.119, for P&R I). Additionally, in petitions for reconsideration that the EPA recently received on the MON, EMACT standards, the Petroleum Refinery Sector rule, and OLD NESHAP, petitioners asserted that it is necessary to make connections to a temporary control device to control the floating roof storage vessel degassing emissions, which may require opening the storage vessel to make these connections. While we do not believe the current language precludes a facility from taking this step, we are revising the standard to include related language for clarity. Therefore, we are proposing that a floating roof storage vessel may be opened prior to degassing to set up equipment (*i.e.,* make connections to a temporary control device), but this must be done in a limited manner and must not actively purge the storage vessel while connections are made.

We calculated the impacts due to controlling storage vessel degassing emissions by evaluating the population of storage vessels that are subject to control under 40 CFR 63.119(a)(2) (for HON) and 40 CFR 63.484(a) (for P&R I, which references 40 CFR 63.119), and not located in Texas. Storage vessels regulated by the HON or P&R I in Texas would already be subject to the degassing requirements, and there would not be additional costs or emissions reductions for these facilities. We estimated there are an average of four Group 1 HON storage vessels per CMPU and two Group 1 P&R I storage vessels per EPPU. We applied these counts to the number of HON and P&R I processes that are not located in Texas, resulting in 1,580 HON storage vessels and 26 P&R I storage vessels newly applicable to vessel degassing requirements. Based on a review of facility responses to our CAA section 114 request, most storage vessels are degassed an average of once every 13 years. Using this average and the population of storage vessels that are not in Texas, we estimated 122 HON storage vessel degassing events and two P&R I storage vessel degassing events would be newly subject to control each year. Controlling HON storage vessel degassing would reduce HAP emissions by 106 tpy, with a total annual cost of approximately $751,500. Controlling P&R I storage vessel degassing would reduce HAP emissions by 1.70 tpy, with

[134] See 30 TAC Chapter 115, Subchapter F, Division 3, available at *https://texreg.sos.state.tx.us/public/readtac%24ext.ViewTAC?tac_view=5&ti=30&pt=1&ch=115&sch=F&div=3&rl=Y.*

[135] See *https://www.tceq.texas.gov/assets/public/permitting/air/Guidance/NewSourceReview/mss/chem-mssdraftconditions.pdf.*

[136] *See http://www.aqmd.gov/docs/default-source/rule-book/reg-xi/rule-1149.pdf.*

a total annual cost of approximately $12,300. See the document titled *Degassing Cost and Emissions Impacts for Storage Vessels Located in the SOCMI Source Category that are Associated with Processes Subject to HON and for Storage Vessels Subject to Either the Group I Polymers and Resins NESHAP or Group II Polymers and Resins NESHAP,* which is available in the docket for this rulemaking, for details on the assumptions and methodologies used in this analysis. We also considered options beyond-the-floor, but we did not identify and are not aware of storage vessel degassing control provisions more stringent than those discussed above and being proposed in this rule; therefore, no beyond-the-floor option was evaluated.

c. Planned Routine Maintenance for Storage Vessels

Although the HON and P&R I currently allow owners and operators to disconnect the fixed roof vessel vent from the closed vent system and control device, fuel gas system, or process equipment for up to 240 hours per year during planned, routine maintenance (see 40 CFR 63.119(e)(3) through (5) (for HON) and 40 CFR 63.484(a) (for P&R I)), we are proposing at 40 CFR 63.119(e)(7) that owners and operators would not be permitted to fill the storage vessel during these periods (such that the vessel would emit HAP to the atmosphere for a limited amount of time due to breathing losses only). The removal of the 240-hr exemption provisions except for vessel breathing losses is based upon our position that removal is needed to satisfy *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008). These requirements are consistent with CAA section 112(d) controls and reflect the MACT floor, as all working loss emissions from storage vessels would be controlled during these periods, ensuring a CAA section 112 standard is in place at this time. We note that in 2018, the EPA finalized these same work practice standards for the Amino/Phenolic Resins NESHAP (83 FR 51842, October 15, 2018). To evaluate the impacts of this proposed change to the HON and P&R I, we assumed owners and operators would install a secondary control device system (to control emissions from vessels during periods of planned routine maintenance of the primary control device) and that activated carbon canisters would be chosen as the method of control. Based on vendor quotes, we determined that the total capital cost of a 55-gallon activated carbon drum with two connections, including piping and duct work, is approximately $1,040. Following the guidelines of the EPA's Seventh Edition OAQPS Control Cost Manual,[137] we estimate that the annual cost per CMPU or EPPU is $180. We also used information about fixed roof storage vessels (including stored materials) that industry provided to EPA in response to our CAA section 114 request (see section II.C of this preamble). We estimate that there could be up to 4 fixed roof storage vessels per CMPU requiring emissions control under the HON. We multiplied this estimate (4) by the total HON processes nationwide (634) and approximated that there are 2,536 fixed roof storage vessels requiring emissions control under the HON nationwide. For P&R I, we assumed that each P&R I facility has two fixed roof storage vessels per EPPU that are subject to control.[138] We also assumed that each facility has one P&R process. Using these assumptions, we approximated that there are 38 fixed roof storage vessels requiring emissions control under P&R I nationwide. We then estimated that the highest amount of HAP emissions that would be expected to occur from a HON or P&R I fixed roof storage vessel during the 240 hours of planned routine maintenance would be 19.3 pounds, if the emissions are not controlled. These emissions were based on the largest vessel capacity and highest vapor pressure material stored in a vessel that was reported in response to our CAA section 114 request, and estimated using the emission estimation procedures from Chapter 7 of EPA's Compilation Of Air Pollutant Emission Factors,[139] assuming that only breathing losses would occur during this period. We assumed that activated carbon canisters would achieve a 95 percent reduction in HAP emissions, which would reduce emissions per vessel by 18.3 lbs HAP. Based on our cost and emissions assumptions, the nationwide capital cost for removal of the 240-hr exemption provisions (except for vessel breathing losses) for the HON is $2.64 million and the annualized capital costs is $0.46 million; and for P&R I is $0.04 million and the annualized capital costs is about $0.01 million. See the document titled *Cost and Emissions Impacts for 240 Hour Planned Routine Maintenance Work Practice Standard on Storage Vessels Located in the SOCMI Source Category that are Associated with Processes Subject to HON and for Storage Vessels Subject to the Group I Polymers and Resins NESHAP,* which is available in the docket for this rulemaking, for details on the assumptions and methodologies used in this analysis.

As a beyond-the-floor control option, we considered requiring owners and operators to also control breathing losses from storage vessels during periods of planned routine maintenance of the emission control system. However, this option is expected to be not cost effective. For example, the EPA estimated a cost of $62,400 per ton of HAP emissions reduced in their analysis conducted for this same option in the Amino/Phenolic Resins NESHAP (82 FR 40103, August 24, 2017).

5. Dioxins and Furans Emission Limits

The HON, P&R I, and P&R II do not currently regulate emissions of polychlorinated dibenzo-p-dioxins (dioxins) and polychlorinated dibenzofurans (furans). Dioxins and furans can be formed when chlorinated compounds are present and combusted in, for example, a thermal oxidizer. HON facilities that release dioxins and furans include those that manufacture chlorinated SOCMI chemicals (*e.g.,* chloroform, chloroprene, ethylene dichloride, methyl chloride, trichloroethylene, vinyl chloride). While the HON has 207 facilities and 634 CMPUs, we estimated that at least 18 HON facilities and 34 CMPUs manufacture these chlorinated compounds and would have emissions of dioxins and furans. As neoprene production facilities and epichlorohydrin elastomer facilities in P&R I use, produce, or emit chlorinated chemicals and all P&R II facilities use epichlorohydrin as a feedstock, they can also produce and emit dioxins and furans through combustion controls. Since dioxins and furans are currently an unregulated pollutant in these NESHAP, we are proposing dioxins and furans MACT standards under CAA section 112(d)(2) and (3) for the HON, P&R I, and P&R II.

The MACT standard setting process starts with determining the level of HAP emissions limitation that is currently achieved by the best-controlled similar source (for new source standards) or by the average of the best-performing

[137] Air Pollution Control Cost Manual—Section 3: VOC Controls; Section 3.1: VOC Recapture Controls, Carbon Adsorbers Calculation Spreadsheet. Retrieved from *https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-reports-and-guidance-air-pollution.* October 2018.

[138] This assumption is based on the median between four and zero because our HON average is four, and the one facility that received the CAA section 114 request and is subject to both the HON and P&R I, reported zero Group 1 storage vessels subject to P&R I.

[139] Compilation of Air Pollutant Emission Factors. Volume 1: Stationary Point and Area Sources. AP–42, Fifth Edition. Chapter 7: Liquid Storage Tanks. Office of Air Quality Planning and Standards, Research Triangle Park, NC.

sources (for existing source standards). Specifically for categories with 30 or more sources, the MACT floor for existing sources must be at least as stringent as the average emissions limitation achieved by the best performing 12 percent of existing sources for which the EPA has emissions information. For source categories with fewer than 30 sources, the MACT floor for existing sources is the average emission limitation achieved by the best performing five sources. See CAA sections 112(d)(2)–(3)(A) and (B). We applied the upper prediction limit (UPL) and information on the RDL to calculate the MACT floor. Once the UPL is calculated for new sources and existing sources, the UPL must be compared to the three times the RDL value as a final step to assess variability. If the three times the RDL value is greater than the UPL, then three times the RDL is selected as the MACT floor emission level.

Dioxins and furans stack test data are available for nine HON facilities, and we assessed this data to conduct our MACT analyses and develop the emission limits for the HON sources. Multiple stack tests included values below the detection level for certain dioxins and furans congeners. Therefore, we evaluated the RDL and calculated a three times the RDL value of 0.054 ng/dscm at 3 percent oxygen (toxic equivalency basis). Since the HON has well over 30 sources (*i.e.,* 634 CMPUs), we calculated the existing source UPL using data from the top two facilities (*i.e.,* nine times 12 percent rounds up to two) and calculated the new source UPL using data from the best performer. The existing source UPL was calculated as 0.032 ng/dscm at 3 percent oxygen (toxic equivalency basis) and the new source UPL equaled 0.031 ng/dscm at 3 percent oxygen (toxic equivalency basis). For both existing sources and new sources, the three times the RDL value for dioxins and furans was greater than the calculated UPL. As such, we are proposing at 40 CFR 63.113(a)(5) that the dioxins and furans emissions limit for HON facilities is the three times the RDL value of 0.054 ng/dscm at 3 percent oxygen (toxic equivalency basis). To ensure compliance with this limit, we are proposing performance testing requirements that include the use of Method 23 of 40 CFR part 60, appendix A–7 at 40 CFR 63.116(h). We are also proposing a definition for the term ''dioxins and furans'' at 40 CFR 63.101 to mean total tetra—through octachlorinated dibenzo-p-dioxins and dibenzofurans. Finally, we are proposing owners and operators comply with the same monitoring, recordkeeping, and reporting requirements that are already required for compliance with the current process vent standards. We did not identify additional controls or perform a beyond-the-floor analysis for reducing dioxins and furans emissions further because the proposed emission limit is based on the detection limit of the method and represents the lowest concentration of dioxins and furans that can be measured; therefore no further reductions can be achieved that are measurable. We solicit comment on the proposed standards for dioxins and furans for the HON, P&R I, and P&R II. For details on the emission limit calculations, see the document titled *Dioxins and Furans MACT Floor in the SOCMI Source Category for Processes Subject to HON and Processes Subject to Group I and Group II Polymers and Resins NESHAPs,* which is available in the docket for this rulemaking.

Dioxins and furans stack test data are not available for P&R I and P&R II facilities, and in our review of reported emissions inventories, none of these facilities reported emissions of these pollutants from these source categories. However, given that neoprene production facilities and epichlorohydrin facilities in P&R I and all facilities in P&R II have chlorinated chemicals that could be controlled with combustion controls, the mechanism of formation of dioxins and furans is the same as for HON sources controlling chlorinated SOCMI chemicals. Given that no facilities are reporting emissions of these pollutants in their inventories, we believe that the best performing sources that would constitute the MACT floor would have emissions below three times the RDL, which would be the lowest MACT emission standard the EPA would set due to measurement limitations. Thus, we are proposing dioxins and furans emissions limits for P&R I and P&R II facilities using, producing, or emitting chlorinated chemicals that are the same as we are proposing for the HON (*i.e.,* 0.054 ng/dscm at 3 percent oxygen, toxic equivalency basis). We are proposing the dioxins and furans emission limit for P&R I at 40 CFR 63.485(x) (which points to 40 CFR 63.113(a)(5) for continuous front-end process vents) and 40 CFR 63.487(a)(3) and (b)(3) (for batch front-end process vents); and the P&R II emission limit at 40 CFR 63.523(e) (for process vents associated with each existing, new, or reconstructed affected BLR source), 40 CFR 63.524(a)(3) (for process vents associated with each existing affected WSR source), and 40 CFR 63.524(b)(3) (for process vents associated with each new or reconstructed affected WSR source). To ensure compliance with the proposed limit, we are proposing performance testing requirements that include the use of Method 23 of 40 CFR part 60, appendix A–7 at 40 CFR 63.485(x) (which points to 40 CFR 63.116(h) for P&R I continuous front-end process vents) and 40 CFR 63.490(g) (for P&R I batch front-end process vents) and 63.525(m) (for P&R II sources). We are also proposing a definition for the term ''dioxins and furans'' at 40 CFR 63.482 (for P&R I sources) and 40 CFR 63.522 (for P&R II sources) to mean total tetra—through octachlorinated dibenzo-p-dioxins and dibenzofurans. Finally, we are proposing owners and operators comply with the same monitoring, recordkeeping, and reporting requirements that are already required for compliance with the current process vent standards. We solicit comment on the types of emission controls used and stack test data for emissions of dioxins and furans from the P&R I and P&R II source categories.

To evaluate the cost impacts of the proposed emissions limits, we assumed select facilities would install a condenser prior to the existing control device (*e.g.,* thermal oxidizer) to remove chlorinated compounds from the stream and prevent the formation of dioxins and furans in the thermal oxidizer. Of the nine HON facilities with stack test data, two facilities do not meet the proposed emission limit and would need to install a condenser to reduce dioxins and furans emissions.[140] For the twelve HON facilities that do not have stack test data available, we assumed that five facilities would not meet the emission limits and would need to install a condenser to reduce their emissions. We assumed the one P&R I facility with dioxins and furans emissions in the risk modeling file and all five P&R II facilities would need to install a condenser to meet the dioxins and furans emissions limit. Based on our cost assumptions, the nationwide costs to comply with the dioxins and furans emissions limits are $3.9 million in capital costs and $2.3 million in annual costs for the HON; $0.56 million in capital costs and $0.33 million in annual costs for P&R I; and $2.8 million

[140] Note that four facilities do not meet the dioxins and furans emission limit in our dataset, however two of the four facilities are subject to 40 CFR part 63, subpart HHHHHHH, and are complying with a 0.051 ng/dscm at 3 percent oxygen, toxic equivalency basis, limit for PVC-combined process vents and are using the same control device for emissions from HON processes.

in capital costs and $1.6 million in annual costs for P&R II.

We solicit comment on all aspects of the proposed emissions limits for dioxins and furans. See the document titled *Dioxins and Furans MACT Floor in the SOCMI Source Category for Processes Subject to HON and Processes Subject to Group I and Group II Polymers and Resins NESHAPs,* which is available in the docket for this rulemaking, for details on the assumptions and methodologies used in the analyses.

6. Pressure Vessels

We are proposing new requirements for pressure vessels that are associated with processes subject to the HON or P&R I. The EPA is proposing to define pressure vessel at 40 CFR 63.101 (for HON) and 40 CFR 63.482 (for P&R I) to mean ''a storage vessel that is used to store liquids or gases and is designed not to vent to the atmosphere as a result of compression of the vapor headspace in the pressure vessel during filling of the pressure vessel to its design capacity.'' To eliminate any ambiguity in applicability or control requirements, the EPA is also proposing 40 CFR 63.101 (for HON) and 40 CFR 63.482 (for P&R I) to remove the exemption for ''pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere'' from the definition of storage vessel.[141] This long-standing exemption is ambiguous with respect to what ''without emissions to the atmosphere'' means. For example, most pressure vessels have relief devices that allow for venting when pressure exceeds setpoints. In many cases, these vents are routed to control devices; however, control devices are not completely effective (*e.g.,* achieve 98 percent control), and therefore there are emissions to the atmosphere from these pressure vessels, even if they are controlled. There are also instances where other components in pressure systems may allow for fugitive releases because of leaks from fittings or cooling systems. All of these events arguably are ''emissions to the atmosphere'' and therefore it is likely that even if this exemption were maintained, owners and operators of pressure vessels would still have uncertainty regarding whether or not they were subject to substantive requirements. Therefore, the proposed revisions remove the ambiguity associated with the exemption and set standards intended to limit emissions to the atmosphere from pressure vessels. Given that we have seen large emission events from PRDs on pressure vessels (*e.g.,* a 155 tpy 1,3-butadiene atmospheric PRD release was documented from a HON pressure vessel in 2015),[142] we are also proposing at 40 CFR 63.119(a)(7)(v) and 40 CFR 63.484(t) that any atmospheric PRD release from a pressure vessel is a deviation of the PRD work practice standards (see section III.D.2 of this preamble for more information on the proposed PRD work practice standards).

We are proposing LDAR requirements at 40 CFR 63.119(a)(7) (for HON) and 40 CFR 63.484(t) (for P&R I) that are based on similar no-detectable emission requirements required for closed vent systems in most chemical sector NESHAP. These requirements are consistent with CAA section 112(d) controls and reflect the MACT floor. As such, these proposed requirements impose a standard that requires no detectable emissions at all times (*i.e.,* would be required to meet a leak definition of 500 ppm at each point on the pressure vessel where total organic HAP could potentially be emitted); require initial and annual leak monitoring using EPA Method 21 of 40 CFR part 60, Appendix A–7; and require routing organic HAP through a closed vent system to a control device (*i.e.,* no releases to the atmosphere through a pressure vessel's PRD). The proposed standards recognize that pressure vessels can be designed with appropriate capture and containment systems for leak interfaces and pressure vessel PRDs such that the owner or operator can avoid ''willful'' deviations. We also did not identify any additional options beyond those identified above (*i.e.,* beyond-the-floor options) for minimizing emissions to the atmosphere from pressure vessels.

Based on facility responses to our CAA section 114 request, we estimate that there could be up to one pressure vessel per every two CMPUs for a total of 317 pressure vessels requiring emissions control under the HON nationwide (1 pressure vessel per 2 CMPUs × 634 CMPUs = 317 pressure vessels). We also estimate that there are nine P&R I facilities that each have one pressure vessel (for a total of nine pressure vessels requiring emissions control under P&R I nationwide) given that: (1) We are aware of three P&R I facilities within the polybutadiene rubber source category that each have a pressure vessel, (2) there are five P&R I facilities that make styrene butadiene rubber and are therefore likely to each have one 1,3-butadiene pressure vessel, and (3) we are aware of one other pressure vessel (storing EtO) located at a P&R I facility producing epichlorohydrin elastomer. Using information from a 2012 analysis that identified developments for storage vessels at chemical manufacturing facilities and petroleum refineries,[143] we estimate a total HAP emission reduction of 244 tpy for all affected pressure vessels associated with processes subject to the HON and 6.9 tpy HAP for pressure vessels subject to P&R I; the nationwide capital cost for the proposed pressure vessel LDAR requirements for the HON is about $78,000 and the annualized capital costs is $73,000, and for P&R I the nationwide capital cost is $2,200 and the annualized capital costs is about $2,000. See the document titled *Cost and Emissions Impacts for Pressure Vessels Located in the SOCMI Source Category that are Associated with Processes Subject to HON and for Pressure Vessels Subject to the Group I Polymers and Resins NESHAP,* which is available in the docket for this rulemaking, for details on the assumptions and methodologies used in this analysis. We solicit comment on the proposed revisions for pressure vessels.

7. Surge Control Vessels and Bottoms Receivers

The HON and P&R I define a surge control vessel to mean feed drums, recycle drums, and intermediate vessels. Surge control vessels are used within a CMPU or an EPPU when in-process storage, mixing, or management of flow rates or volumes is needed to assist in production of a product. The HON and P&R I define a bottoms receiver as a tank that collects distillation bottoms before the stream is sent for storage or for further downstream processing. Surge control vessels and bottoms receivers are not considered storage vessels under the HON and P&R I because they are covered by the equipment leak provisions. Although these emissions sources are regulated under the equipment leak provisions (*i.e.,* NESHAP subpart H), the equipment leak requirements point back to the storage vessel requirements in NESHAP subpart G. Owners and operators of surge

[141] We note that P&R II does not have a pressure vessel exemption in its definition of storage tank (see 40 CR 63.522).

[142] See the Appendix to the document titled *Cost and Emissions Impacts for Pressure Vessels Located in the SOCMI Source Category that are Associated with Processes Subject to HON and for Pressure Vessels Subject to the Group I Polymers and Resins NESHAP,* which is available in the docket for this rulemaking.

[143] Randall, 2012. Memorandum from Randall, D., RTI International to Parsons, N., EPA/OAQPS. *Survey of Control Technology for Storage Vessels and Analysis of Impacts for Storage Vessel Control Options.* January 20, 2012. EPA Docket No. EPA–HQ–OAR–2010–0871.

control vessels and bottoms receivers are required to comply with the HON storage vessel requirements in NESHAP subpart G (*i.e.,* use a floating roof or route emissions to closed vent system and control to get 95 percent control) provided the surge control vessel or bottoms receiver meets certain capacity and vapor pressure requirements. For HON and P&R I surge control vessels and bottoms receivers at existing sources, storage vessel control requirements apply if the capacity is between 75 m^3 and 151 m^3 and the MTVP is greater than or equal to 13.1 kPa, or the capacity is greater than or equal to 151 m^3 and the MTVP is greater than or equal to 5.2 kPa. For HON and P&R I surge control vessels and bottoms receivers at new sources, storage vessel control requirements apply if the capacity is between 38 m^3 and 151 m^3 and the MTVP is greater than or equal to 13.1 kPa, or the capacity is greater than or equal to 151 m^3 and the MTVP is greater than or equal to 0.7 kPa. The HON and P&R I exclude all other surge control vessels and bottoms receivers from emissions control requirements.

We are proposing at 40 CFR 63.170(b) (for HON) and 40 CFR 63.485(d) (for P&R I) that owners and operators of all surge control vessels and bottoms receivers that emit greater than or equal to 1.0 lb/hr of total organic HAP would be required to reduce emissions of organic HAP using a flare meeting the proposed operating and monitoring requirements for flares (see section III.D.1 of this preamble); or reduce emissions of total organic HAP or TOC by 98 percent by weight or to an exit concentration of 20 ppmv, whichever is less stringent. These requirements are consistent with CAA section 112(d) controls and reflect the MACT floor.[144] Emissions from surge control vessels and bottoms receivers are characteristic of process vents, not emissions from storage vessels. These vessels operate at process temperatures, not ambient storage temperatures; typically do not undergo level changes that larger storage vessels undergo; and are most often operated under pressure with and without non-condensable gases flowing into and out of them. The size of these vessels is also typically not correlated with emissions, as are storage vessels. We did not identify any additional options beyond those identified above (*i.e.,* beyond-the-floor options) for controlling emissions from surge control vessels and bottoms receivers. We solicit comment on the proposed revisions for surge control vessels and bottoms receivers.

8. Transfer Operations (for HON)

Generally, transfer operations refer to the equipment (*e.g.,* transfer racks) that are used to transfer materials (primarily liquid products) from the facility, typically from storage vessels, into transport vehicles, portable cargo units, and marine vessels that are used to carry the material to another site or location. The combination of the transfer rack, storage vessel, connecting piping, and equipment used/on the connecting piping are typically part of the process unit or affected source in existing regulations. The HON regulates transfer operations at 40 CFR 63.126 through 40 CFR 63.130. Transfer operations are defined in the HON at 40 CFR 63.101 to mean the loading, into a tank truck or railcar, of organic liquids that contain one or more of the organic HAP listed in table 2 to NESHAP subpart F from a transfer rack; and transfer operations do not include loading at an operating pressure greater than 204.9 kPa. Transfer racks are also defined in the HON at 40 CFR 63.101. Under the HON, transfer racks mean the collection of loading arms and loading hoses, at a single loading rack, that are assigned to a CMPU subject to NESHAP subpart F according to the procedures specified in 40 CFR 63.100(h) and are used to fill tank trucks and/or railcars with organic liquids that contain one or more of the organic HAP listed in table 2 to NESHAP subpart F. A transfer rack includes the associated pumps, meters, shutoff valves, relief valves, and other piping and valves, but does not include: (1) Racks, arms, or hoses that only transfer liquids containing organic HAP as impurities; (2) racks, arms, or hoses that vapor balance during all loading operations; or (3) racks transferring organic liquids that contain organic HAP only as impurities.

In general, when the equipment and operations are physically separate (*i.e.,* do not share common piping, valves, and other equipment), the transfer racks are considered separate transfer racks. Transfer rack emissions depend on several factors, including the physical and chemical characteristics of the liquid being loaded, the quantity of material loaded, and the loading conditions. Primarily, these characteristics boil down to the volatility (or vapor pressure) and molecular weight of the liquid being transferred, the temperature and pressure conditions of the transfer operation, the loading method employed (*e.g.,* submerged loading versus splash loading), and the volume of material transferred. In addition, during the loading of liquid into transport vehicles, VOC and HAP vapors present in the transport vehicle are displaced by the liquid being loaded. The vapors in the transport vehicle include either vapors generated as the liquid is being loaded, and/or vapors remaining from residual commodity or liquid from the previous load (if present). For uncontrolled operations, transfer rack emissions typically occur at the loading hatch or opening of the transport vehicle. Emissions can also occur from leaks in the transport vehicle. The rate at which these VOC and HAP are emitted varies depending on which type of transport vehicle is being loaded (tank truck or railcar), whether the transport vehicle was empty before filling or refilled while still containing a heel and vapors, the physical and chemical characteristics of the liquid being loaded, and the type of loading method used.

Owners and operators of each HON transfer rack that annually loads greater than or equal to 0.65 million liters of liquid products that contain organic HAP with a rack weighted average vapor pressure greater than or equal to 10.3 kPa are required to equip each transfer rack with a vapor collection system and control device to reduce total organic HAP emissions by 98 percent by weight or to an exit concentration of 20 ppmv, whichever is less stringent. The HON also allows multiple other options to control emissions from applicable transfer racks, including: use of a flare, or collecting emissions for use in the process, a fuel gas system, or a vapor balance system. However, as previously mentioned, the HON excludes transfer racks with an operating pressure greater than 204.9 kPa from these requirements. While we recognize that these high operating pressure transfer racks are likely being controlled by owners and operators, the HON does not currently require them to be controlled on the presupposition that transfer racks with an operating pressure greater than 204.9 kPa do not leak emissions to the atmosphere. We consider the lack of control requirements for transfer racks with an operating pressure greater than 204.9 kPa to be a gap in the current HON. As such, we are proposing to remove the 204.9 kPa operating pressure exemption from the definition of transfer operations at 40 CFR 63.101 on the premise that, just like pressure vessels (as discussed in section III.D.6 of this preamble), these high operating pressure transfer racks can have

[144] They also represent the level of control found to be cost-effective for process vents and that we are proposing for HON process vents under technology review in section III.C.3 of this preamble.

emissions to the atmosphere. Considering this, owners and operators would be required to equip each transfer rack with an operating pressure greater than 204.9 kPa with a vapor collection system and control device to reduce total organic HAP emissions by 98 percent by weight or to an exit concentration of 20 parts per million by volume, whichever is less stringent. These requirements are consistent with CAA section 112(d) controls and reflect the MACT floor, and we did not identify any additional options beyond this (*i.e.,* beyond-the-floor options) for controlling emissions from these transfer racks.

We anticipate that the proposed removal of the 204.9 kPa operating pressure exemption from the definition of transfer operations would not impose a cost increase because we believe that owners and operators are already controlling emissions from transfer racks with an operating pressure greater than 204.9 kPa. For example, as discussed in an EPA published document regarding sources of EtO,[145] EtO is normally shipped in 38,000 and 76,000 liter (10,000 and 20,000 gallon) railroad tank cars, which are normally loaded directly from plant storage vessels. The transfer generally occurs at about 350 kPa. At most facilities, displaced vapors from the filling of tank cars and storage vessels are either recycled to the process or scrubbed prior to incineration or flaring. When the vapors are scrubbed, the liquid effluent from the scrubber is routed to the desorber for EtO recovery. Emissions of EtO from storage and loading are assumed to be nearly zero if either control approach is used. We solicit comment on the proposed removal of the 204.9 kPa operating pressure exemption from the definition of transfer operations and whether our assumption that these types of transfer racks are already being controlled is reasonable.

9. Heat Exchange Systems (for P&R II)

P&R II currently does not regulate HAP emissions from heat exchange systems. However, as previously discussed in sections III.B.2.a.iii and III.C.1 of this preamble, the internal tubing material of a heat exchanger can corrode or crack, allowing some process fluids to mix or become entrained with the cooling water. Pollutants in the process fluids may subsequently be released from the cooling water into the atmosphere when the water is exposed to air (*e.g.,* in a cooling tower for closed-loop systems or trenches/ponds in a once-through system). For this reason, we are proposing under CAA section 112(d)(2) and (3) to include in P&R II the same LDAR program for heat exchange systems as in the HON and P&R I, and we are proposing the same changes to this LDAR program for P&R II that we are proposing in this action for the HON and P&R I (see section III.C.1 of this preamble). Specifically, we are proposing at 40 CFR 63.522 to revise the definition of ''affected source'' to include heat exchange systems; and we are proposing the same definition of ''heat exchange systems'' for P&R II that is already used in the HON and P&R I to mean ''any cooling tower system or once-through cooling water system (*e.g.,* river or pond water). A heat exchange system can include more than one heat exchanger and can include an entire recirculating or once-through cooling system.''

We reviewed publicly available air permits for the five facilities subject to either the BLR or WSR standards in P&R II and found that some of these facilities do have heat exchange systems. In reviewing air permits, three of the five facilities subject to P&R II are collocated with HON sources. Furthermore, we also anticipate that the heat exchange systems used at these sources are small (<10,000 gallons per minute) and would likely be sent to large, integrated cooling towers subject to other NESHAP, like the HON, that are already conducting water sampling at the cooling tower for leaks. Additionally, we expect that most water used by heat exchange systems in P&R II processes are likely from water jacketed reactors that either have large pressure differentials (*i.e.,* >35 kPa) between the cooling water side and process side or have intervening cooling fluids between the process and cooling water such that leaks of HAP would not occur in heat exchange systems that would lead to air emissions. Given this, we assumed that adding requirements for heat exchange systems would already be accounted for in the HON or that heat exchange systems would not be required to conduct such monitoring at P&R II sources because they meet criteria that exempt heat exchange systems with no potential for air emissions from the LDAR requirements. Thus, conducting an LDAR program consistent with what is in the HON constitutes what the best performers are doing and is the MACT floor level of control for P&R II facilities. We note that even if a P&R II facility were to incur a cost to implement a LDAR program for a heat exchange system, we would expect this cost to be small (*i.e.,* $4,300 in total capital investment and $4,500/yr in total annualized cost) per the costs for a single heat exchange system conducting El Paso monitoring and that this work practice standard would be cost-effective for P&R II sources as a beyond-the-floor control option. Thus, we are proposing that P&R II sources comply with the same standard as we are proposing for HON and P&R I heat exchange systems as part of our technology review (see section III.C.1 of this preamble). For further information, see the document titled *Clean Air Act Section 112(d)(6) Technology Review for Heat Exchange Systems Located in the SOCMI Source Category that are Associated with Processes Subject to HON and for Heat Exchange Systems that are Associated with Processes Subject to Group I Polymers and Resins NESHAP; and Control Option Impacts for Heat Exchange Systems that are Associated with Processes Subject to Group II Polymers and Resins NESHAP,* which is available in the docket for this rulemaking.

We are proposing at 40 CFR 63.523(d) (for BLR manufacturers) and 40 CFR 63.524(c) (for WSR manufacturers) that owners and operators of each affected source comply with the requirements of 40 CFR 63.104 for heat exchange systems, except we are proposing to require quarterly monitoring for existing and new heat exchange systems (after an initial 6 months of monthly monitoring) using the Modified El Paso Method and a leak definition of 6.2 ppmv of total strippable hydrocarbon concentration (as methane) in the stripping gas. We are also proposing at 40 CFR 63.104(j)(3) a delay of repair action level of total strippable hydrocarbon concentration (as methane) in the stripping gas of 62 ppmv, that if exceeded during leak monitoring, would require immediate repair (*i.e.,* the leak found cannot be put on delay of repair and would be required to be repaired within 30 days of the monitoring event). This would apply to both monitoring heat exchange systems and individual heat exchangers by replacing the use of any 40 CFR part 136 water sampling method with the Modified El Paso Method and removing the option that allows for use of a surrogate indicator of leaks. We are also proposing at 40 CFR 63.104(h) and (i) re-monitoring at the monitoring location where a leak is identified to ensure that any leaks found are fixed. Finally, we are proposing that none of these proposed requirements would apply to heat exchange systems that have a maximum cooling water flow rate of 10 gallons per minute or less. We solicit

[145] EPA. *Locating And Estimating Air Emissions From Sources Of Ethylene Oxide.* September 1986. EPA–450/4–84–007L.

comment on the proposed standards for heat exchange systems for P&R II.

10. WSR Sources and Equipment Leaks (for P&R II)

P&R II currently contains an alternative standard for WSR sources that establishes a regulatory gap in the rule at 40 CFR 63.524(a) and (b). The alternative standard allows owners and operators of WSR sources to choose between complying with a production-based emission limit for process vents, storage tanks, and wastewater systems, or the requirements of NESHAP subpart H to control emissions from equipment leaks. In other words, owners and operators of WSR sources are currently not required to control emissions from all of their P&R II emission sources.[146] In the original proposed rulemaking, the EPA stated that: ''Because no existing facility in the WSR source category controls equipment leak emissions, the MACT floor for the equipment leaks portion of the source represents an uncontrolled situation.'' [147] Instead, the EPA promulgated the alternative standard for WSR sources and said ''an alternative standard was specified that allows facilities to implement the requirements of subpart H to control emissions from equipment leaks. The alternative standard is much more cost effective, and will result in a greater overall HAP emission reduction. However, the alternative standard is not being required because the cost was considered to be too high to justify requiring more control than that achieved at the MACT floor. Section 112(d) of the Clean Air Act requires standards to be set at a level no less stringent than the MACT floor but requires consideration of the cost of achieving further reductions before requiring reductions beyond the MACT floor.'' [148] We are proposing to address this regulatory gap by requiring owners and operators of existing, new, or reconstructed affected WSR sources to comply with both the equipment leak standards in the HON and the HAP emissions limitation for process vents, storage tanks, and wastewater systems (see proposed 40 CFR 63.524(a)(3) and (b)(3)). We are also proposing to remove several introductory phrases in P&R II that currently indicate the alternative standard is optional; and instead, we are proposing to replace these phrases with text that indicate the alternative standard is no longer optional, but required (see proposed 40 CFR 63.525(e) through (i), 40 CFR 63.526(b) and (d), and 40 CFR 63.527(b) through (d)). As previously mentioned, the EPA determined that no WSR source was originally complying with the requirements of NESHAP subpart H; instead, these WSR sources were originally complying with the production-based emission limit for process vents, storage tanks, and wastewater systems. However, a review of the publicly available permits for the two WSR sources indicates that they are currently complying with the equipment leak requirements of the HON; thus, we believe the requirements are consistent with CAA section 112(d) controls, reflect the MACT floor, and there are no additional costs from this change. We also did not identify any additional options beyond those identified above (*i.e.,* beyond-the-floor options) for reducing emissions from WSR sources. We solicit comment on our proposal to require owners and operators of existing, new, or reconstructed affected WSR sources to comply with both the equipment leak standards in the HON and the HAP emissions limitation for process vents, storage tanks, and wastewater systems, and whether our assumption that the affected WSR sources are already complying with both standards is reasonable.

In addition, the definition of equipment leaks in P&R II at 40 CFR 63.522 excludes ''valves'' in the list of components; therefore, P&R II currently does not regulate HAP emissions from leaking valves. We believe this is a typographical error in P&R II and the EPA has always intended to include valves as part of the equipment leaks LDAR program requirements in P&R II. We note that in the original P&R II proposal (see 59 FR 25387, May 16, 1994), the EPA referred to equipment leak emission points using a phrase implying valve inclusivity (*i.e.,* ''such as pumps and valves''). Additionally, the BLR and WSR model plants used to assess impacts of implementing the LDAR requirements in P&R II included valve component counts; [149] and no adverse comment was received on this topic between proposal and final rulemaking for P&R II. As previously mentioned, emissions of HAP from equipment leaks occur in the form of gases or liquids that escape to the atmosphere through many types of connection points (including valves). For this reason, we are proposing under CAA section 112(d)(2) and (3) to include valves in the definition of ''equipment leaks'' at 40 CFR 63.522 such that owners and operators of an existing, new, or reconstructed affected BLR or WSR source would be required to comply with the same LDAR program that already exists in the HON and P&R I for valves that contain or contact material that is 5 percent by weight or more of organic HAP, operate 300 hours per year or more, and are not in vacuum service. Specifically, our proposal would require owners or operators to meet the control requirements for valves in NESHAP subpart H (see section III.C.6.a of this preamble for a more detailed description of the MACT standard for equipment leaks). A review of the publicly available permits for P&R II sources indicates that P&R II facilities are already complying with the equipment leak requirements of the HON (which include LDAR requirements for valves), so we believe there are no additional cost or emissions reduction from this proposed typographical correction. We solicit comment on the proposed revisions for equipment leaks from WSR sources in P&R II.

E. What other actions are we proposing, and what is the rationale for those actions?

In addition to the proposed actions on the CAA 111(b)(1)(B) and 112(d)(6) reviews discussed in section III.A of this preamble, we are proposing to remove exemptions in the HON, P&R I, and P&R II from the requirement to comply during periods of SSM; similarly, we are proposing standards in NSPS subparts VVb, IIIa, NNNa, and RRRa that apply at all times. We are also proposing to remove the affirmative defense provisions from P&R I that were adopted in 2011. In addition, we are proposing changes to the HON, P&R I, and P&R II recordkeeping and reporting requirements to require the use of electronic reporting of performance test reports and periodic reports; and we are proposing similar standards in NSPS subparts VVb, IIIa, NNNa, and RRRa. We are also proposing in the HON, P&R I, and P&R II to correct section reference errors and make other minor editorial revisions. Finally, in response to a petition for reconsideration, we are proposing to amend NSPS subpart VVa; and although not part of the petition for reconsideration, we are also proposing to clarify (in NSPS subpart VVa) the

[146] This alternative standard is not an option for BLR sources; therefore, there is no regulatory gap in P&R II for BLR sources. Instead, owners and operators of BLR sources are subject to both a production-based emission limit for process vents, storage tanks, and wastewater systems, and the requirements of NESHAP subpart H to control emissions from equipment leaks (see 40 CFR 63.523).

[147] See 59 FR 25387, May 16, 1994.

[148] See 60 FR 12670, March 8, 1995.

[149] See Appendix G of the document titled *Hazardous Air Pollutants From Epoxy Resins And Non-nylon Polyamide Resins Production* (Docket ID A–92–37, Item II–A–008).

calibration drift assessment and correct the incorporations by reference. Our rationale and proposed changes related to all of these issues are discussed below.

1. SSM

In its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the United States Court of Appeals for the District of Columbia Circuit (the court) vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some section 112 standards apply continuously. With the issuance of the mandate in *Sierra Club* v. *EPA,* the exemption language in 63.6(f)(1) and (h)(1) are null and void and any cross reference to those provisions have no effect.

In March 2021, the EPA issued a rule [150] to reflect the court vacatur that revised the Part 63 General Provisions to remove the SSM exemptions at 40 CFR 63.6(f)(1) and (h)(1). In this action, we are proposing to eliminate references in the HON, P&R I, and P&R II to these SSM exemptions in the General Provisions that are null and void and are no longer printed in the CFR, remove any additional SSM exemptions or references to SSM exemptions in the HON, P&R I, and P&R II, and remove any cross-references in the HON, P&R I, and P&R II to provisions in 40 CFR part 63 (General Provisions) that are unnecessary, inappropriate or redundant in the absence of the SSM exemption.[151] See section III.E.1.a of this preamble for our proposed amendments to the HON, P&R I, and P&R II related to the SSM exemptions. The EPA has attempted to ensure that the general provisions we are proposing to override are inappropriate, unnecessary, or redundant in the absence of the SSM exemption. We specifically seek comment on whether we have successfully done so.

Additionally, the EPA has determined the reasoning in the court's decision in *Sierra Club* applies equally to CAA section 111 because the definition of emission or standard in CAA section 302(k), and the embedded requirement for continuous standards, also applies to the NSPS.[152] Therefore, we are proposing standards in NSPS subparts VVb, IIIa, NNNa, and RRRa that apply at all times, and more specifically during periods of SSM, to match the proposed revised SSM provisions in the HON, P&R I, and P&R II. The NSPS general provisions in 40 CFR 60.8(c) currently exempt non-opacity emission standards during periods of SSM. We are proposing in NSPS subparts VVb, IIIa, NNNa, and RRRa specific requirements [153] that override the general provisions for SSM. See section E.1.b of this preamble for our proposed standards related to the SSM exemptions for NSPS subparts VVb, IIIa, NNNa, and RRRa.

a. Proposed Elimination of the SSM Exemption in the HON, P&R I, and P&R II

We are proposing the elimination of the vacated exemption provision and several revisions to Table 3 to subpart F of part 63 (the General Provisions Applicability Table to subparts F, G, and H of 40 CFR part 63, hereafter referred to as the ''General Provisions table to HON''), Table 1 to subpart U of part 63 (the General Provisions Applicability Table to subpart U of 40 CFR part 63, hereafter referred to as the ''General Provisions table to P&R I''), and Table 1 to subpart W of part 63 (the General Provisions Applicability Table to subpart W of 40 CFR part 63, hereafter referred to as the ''General Provisions table to P&R II'') as is explained in more detail below. For example, we are proposing to eliminate the incorporation of the General Provisions' requirement that the source develop an SSM plan. We also are proposing to eliminate and revise certain recordkeeping and reporting requirements related to the SSM exemption. The EPA has attempted to ensure that the provisions we are proposing to eliminate are inappropriate, unnecessary, or redundant in the absence of the SSM exemption.

For the HON and P&R II, we are proposing (as already required in P&R I at 40 CFR 63.480(j)) that emissions from startup and shutdown activities be included when determining if all the standards are being met. As currently proposed in 40 CFR 63.102(e) and 40 CFR.525(j), compliance with the emission limitations (including operating limits) in the HON and P&R II is required ''at all times.'' We solicit comment on whether owners and operators of affected sources subject to the HON or P&R II will be able to comply with the standards during these times. We also note that we are proposing standards for maintenance activities that occur during periods of startup and shutdown (see section III.D.4 of this preamble). Emission reductions for storage vessel, process vent, transfer rack, and wastewater operations (as well as other emission sources) are typically achieved by routing vapors to an APCD such as a flare, thermal oxidizer, or carbon adsorber. It is common practice in this source category to start an APCD prior to startup of the emissions source it is controlling, so the APCD would be operating before emissions are routed to it. We expect APCDs would be operating during startup and shutdown events in a manner consistent with normal operating periods, and that these APCDs will be operated to maintain and meet the monitoring parameter operating limits set during the performance test.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. Malfunctions, in contrast, are neither predictable nor routine. Instead, they are, by definition, sudden, infrequent, and not reasonably preventable failures of emissions control, process, or monitoring equipment. (40 CFR 60.2 and 40 CFR 63.2) (definition of ''malfunction''). The EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards and this reading has been upheld as reasonable by the D.C. Circuit in *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–610 (2016). Therefore, the standards that apply during normal operation apply during periods of malfunction.

Although no statutory language compels the EPA to set standards for malfunctions, the EPA has the discretion to do so where feasible. For example, in the Petroleum Refinery Sector RTR, the EMACT standards, and

[150] U.S. EPA, *Court Vacatur of Exemption From Emission Standards During Periods of Startup, Shutdown, and Malfunction.* (86 FR 13819, March 11, 2021).

[151] We note that on April 21, 2011 (see 77 FR 22566), the EPA finalized amendments to eliminate the SSM exemption in P&R I; however, for consistency with the SSM related amendments that we are proposing for the HON and P&R II, we are also proposing (as detailed in this section of this preamble) additional amendments to P&R I related to the SSM exemption that were not addressed in the April 21, 2011, P&R I rule.

[152] See, *e.g.,* 88 FR 11556 (Feb. 23, 2023) (removing SSM exemptions from NSPS for lead acid battery manufacturing plants); 87 FR 73708 (Dec. 1, 2022) (proposing to remove SSM exemptions from NSPS for secondary lead smelters); 77 FR 49490 (Aug. 16, 2012) (removing SSM exemptions from NSPS for oil and natural gas sector).

[153] See proposed 40 CFR 60.482–1b, 40 CFR 60.612a, 40 CFR 60.662a, and 40 CFR 60.702a, respectively.

the MON, the EPA established a work practice standard for unique types of malfunction that result in releases from PRDs or emergency flaring events because the EPA had information to determine that such work practices reflected the level of control that applies to the best performers (see 80 FR 75178, December 1, 2015, 85 FR 40386, July 6, 2020, and 85 FR 49084, August 12, 2020, respectively). The EPA will consider whether circumstances warrant setting standards for a particular type of malfunction in the SOCMI, P&R I, and P&R II source categories, and, if so, whether the EPA has sufficient information to identify the relevant best performing sources and establish a standard for such malfunctions. We also encourage commenters to provide any such information. These are discussed further in section III.D.1 and III.D.2 of this preamble.

We are also proposing the following revisions to the General Provisions table to HON, the General Provisions table to P&R I, and the General Provisions table to P&R II as detailed below.

i. General Duty

We are proposing to revise the General Provisions table to the HON entry for 40 CFR 63.6(e) by adding a footnote to the ''yes'' entry in column 2 to clarify that the row for the ''63.6(e)'' entry would no longer be applicable beginning 3 years after publication of the final rule in the **Federal Register** because the General Provisions table to HON already contains other entries that breakdown the specific paragraphs of 63.6(e) that are applicable to the HON. Some of the language in section 63.6(e) is no longer necessary or appropriate in light of the elimination of the SSM exemption. Section 63.6(e)(1)(i) describes the general duty to minimize emissions and section 63.6(e)(3) describes requirements for an SSM plan. We are proposing instead to add general duty regulatory text at 40 CFR 63.102(f) (for HON) and 40 CFR 63.525(k) (for P&R II) that reflects the general duty to minimize emissions while eliminating the reference to periods covered by an SSM exemption. The current language in 40 CFR 63.6(e)(1)(i) characterizes what the general duty entails during periods of SSM. With the elimination of the SSM exemption, there is no need to differentiate between normal operations, startup and shutdown, and malfunction events in describing the general duty. We are also proposing to revise the General Provisions table to P&R II entry for 40 CFR 63.6(e)(1)(i) by adding a separate row for 40 CFR 63.6(e)(1)(i) and changing the ''yes'' in columns 2, 3, and 4 to a ''no'' in which 40 CFR 63.6(e)(1)(i) would no longer be applicable beginning 3 years after publication of the final rule in the **Federal Register**. Section 63.6(e)(1)(i) imposes requirements that are not necessary with the elimination of the SSM exemption or are redundant with the general duty requirement being added at 40 CFR 63.102(f) and 40 CFR 63.525(k). Therefore, the language the EPA is proposing for 40 CFR 63.102(f) and 40 CFR 63.525(k) does not include the language from 40 CFR 63.6(e)(1). We note that the EPA already added a similar general duty provision to P&R I at 40 CFR 63.483(a) (see 77 FR 22566, April 21, 2011); however, we are proposing to correct a referencing error in the General Provisions table to P&R I entry for 40 CFR 63.6(e)(1)(i) by changing ''§ 63.483(a)(1)'' to ''§ 63.483(a)''. We are also proposing revisions at 40 CFR 63.483(a) to be consistent with the general duty requirement we are proposing to add to 40 CFR 63.102(f) and 40 CFR 63.525(k).We are also proposing to revise the General Provisions table to HON entry for 40 CFR 63.6(e)(1)(ii) by changing the ''yes'' in column 2 to a ''no'' in which 40 CFR 63.6(e)(1)(ii) would no longer be applicable beginning 3 years after publication of the final rule in the **Federal Register**. We are proposing similar revisions for the General Provisions table to P&R II by adding a separate row for 40 CFR 63.6(e)(1)(ii) and changing the ''yes'' in columns 2, 3, and 4 to a ''no'' in which 40 CFR 63.6(e)(1)(ii) would no longer be applicable beginning 3 years after publication of the final rule in the **Federal Register**. We note that the EPA already made a similar revision to the General Provisions table to P&R I (see 77 FR 22566, April 21, 2011).

ii. SSM Plan

As noted in the previous paragraph, the proposed revisions to the General Provisions table to the HON and the General Provisions table to P&R II for 40 CFR 63.6(e) will also remove provisions that require an SSM plan. We are proposing to revise the General Provisions table to HON entries for 40 CFR 63.6(e)(3)(i), 63.6(e)(3)(i)(B), (C), 63.6(e)(3)(ii) and (vi) through (ix) by changing the ''yes'' in column 2 to a ''no'' in which these provisions would no longer be applicable beginning 3 years after publication of the final rule in the **Federal Register**. We are proposing similar revisions for the General Provisions table to P&R II by adding a separate row for 40 CFR 63.6(e)(3) and changing the ''yes'' in columns 2, 3, and 4 to a ''no'' in which 40 CFR 63.6(e)(3) would no longer be applicable beginning 3 years after publication of the final rule in the **Federal Register**. We note that the EPA already made a similar revision to the General Provisions table to P&R I (see 77 FR 22566, April 21, 2011). Generally, the paragraphs under 40 CFR 63.6(e)(3) require development of an SSM plan and specify SSM recordkeeping and reporting requirements related to the SSM plan. As noted, the EPA is proposing to remove the SSM exemptions. Therefore, affected units are subject to an emission standard during such events. The applicability of a standard during such events will ensure that sources have ample incentive to plan for and achieve compliance and thus the SSM plan requirements are no longer necessary.

iii. Compliance With Standards

We are proposing to clarify the comment in the General Provisions table to HON entry for 40 CFR 63.6(f)(1) to include a reference to the new proposed general duty requirements at 40 CFR 63.102(e). We are also proposing to add a separate row for 40 CFR 63.7(a)(4) to the General Provisions tables to the HON, P&R I, and P&R II to make 40 CFR 63.7(a)(4) applicable to each of these NESHAP for when an owner or operator intends to assert a claim of force majeure.

iv. Performance Testing

We are proposing to revise the General Provisions table to HON entry for 40 CFR 63.7(e)(1) by changing the ''yes'' in column 2 to a ''no'' in which 40 CFR 63.7(e)(1) would no longer be applicable beginning 3 years after publication of the final rule in the **Federal Register**. Section 63.7(e)(1) describes performance testing requirements. We are proposing a similar revision to the General Provisions table to P&R II entry for 40 CFR 63.7(e)(1) by changing the ''yes'' in columns 2, 3, and 4 to a ''no'' in which 40 CFR 63.7(e)(1) would no longer be applicable beginning 3 years after publication of the final rule in the **Federal Register**. We note that the EPA already made a similar revision to the General Provisions table to P&R I (see 77 FR 22566, April 21, 2011). The EPA is instead proposing to add a performance testing requirement at 40 CFR 63.103(b)(3)(ii) (for HON), 40 CFR 63.504(a)(1)(iii) (for P&R I), and 40 CFR 63.525(l) (for P&R II). The performance testing requirements we are proposing differ from the General Provisions performance testing provisions in several respects. The regulatory text does not include the language in 40 CFR 63.7(e)(1) that restated the SSM

exemption and language that precluded startup and shutdown periods from being considered ''representative'' for purposes of performance testing. The proposed performance testing provisions will exclude periods of startup or shutdown as representative conditions for conducting performance testing. As in 40 CFR 63.7(e)(1), performance tests conducted under this subpart should not be conducted during malfunctions because conditions during malfunctions are often not representative of normal operating conditions. The EPA is proposing to add language that requires the owner or operator to record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Section 63.7(e)(1) requires that the owner or operator make such records ''as may be necessary to determine the condition of the performance test'' available to the Administrator upon request but does not specifically require the information to be recorded. The regulatory text the EPA is proposing to add to this provision builds on that requirement and makes explicit the requirement to record the information.

v. Monitoring

We are proposing to revise the General Provisions tables to the HON and P&R I entries for 40 CFR 63.8(c)(1)(i) and (iii) by changing the ''yes'' in column 2 to a ''no'' in which 40 CFR 63.8(c)(1)(i) and (iii) would no longer be applicable beginning 3 years after publication of the final rule in the **Federal Register**. We are proposing similar revisions for the General Provisions table to P&R II entries for 40 CFR 63.8(c)(1)(i) and (iii) by changing the ''yes'' in columns 2, 3, and 4 to a ''no'' in which 40 CFR 63.8(c)(1)(i) and (iii) would no longer be applicable beginning 3 years after publication of the final rule in the **Federal Register**. The cross-references to the general duty and SSM plan requirements in those subparagraphs are not necessary in light of other requirements of 40 CFR 63.8 that require good air pollution control practices (40 CFR 63.8(c)(1)).

vi. Reporting

We are proposing to revise the General Provisions table to the HON entry for 40 CFR 63.10(d)(5) by changing the ''yes'' in column 2 to a ''no'' in which 40 CFR 63.10(d)(5) would no longer be applicable beginning 3 years after publication of the final rule in the **Federal Register**. We are proposing similar revisions for the General Provisions table to P&R II entry for 40 CFR 63.10(d)(5) by changing the ''yes'' in columns 2, 3, and 4 to a ''no'' in which 40 CFR 63.10(d)(5) would no longer be applicable beginning 3 years after publication of the final rule in the **Federal Register**. We note that the EPA already made a similar revision to the General Provisions table to P&R I (see 77 FR 22566, April 21, 2011). Section 63.10(d)(5) describes the reporting requirements for SSM. To replace the General Provisions reporting requirement, the EPA is proposing to add reporting requirements to 40 CFR 63.152(c)(2)(ii)(F) (for HON), 40 CFR 63.506(e)(6)(iii)(C) (for P&R I), and 40 CFR 63.528(a)(4) (for P&R II). The replacement language differs from the General Provisions requirement in that it eliminates periodic SSM reports as a stand-alone report. We are proposing language that requires sources that fail to meet an applicable standard at any time to report the information concerning such events in the periodic report already required under the HON, P&R I, and P&R II. We are proposing that the report must contain the cause of such events (including unknown cause, if applicable), a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions. Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA is proposing this requirement to ensure that there is adequate information to determine compliance, to allow the EPA to determine the severity of the failure to meet an applicable standard, and to provide data that may document how the source met the general duty to minimize emissions during a failure to meet an applicable standard.

We will no longer require owners or operators to determine whether actions taken to correct a malfunction are consistent with an SSM plan, because plans would no longer be required. The proposed amendments at 63.10(d)(5), therefore, eliminate the cross-reference to 40 CFR 63.10(d)(5)(i) that contains the description of the previously required SSM report format and submittal schedule from this section. These specifications are no longer necessary because the events will be reported in otherwise required reports with similar format and submittal requirements.

The proposed amendments at 63.10(d)(5) will also eliminate the cross-reference to 40 CFR 63.10(d)(5)(ii). Section 63.10(d)(5)(ii) describes an immediate report for startups, shutdown, and malfunctions when a source failed to meet an applicable standard but did not follow the SSM plan. We will no longer require owners or operators to report when actions taken during a startup, shutdown, or malfunction were not consistent with an SSM plan, because plans would no longer be required.

b. Proposal of NSPS Subparts VVb, IIIa, NNNa, and RRRa Without SSM Exemptions

We are proposing standards in the NSPS subparts VVb, IIIa, NNNa, and RRRa that apply at all times. For NSPS VVb, we are proposing that the work practice standards will apply at all times, including during SSM. For NSPS subparts IIIa, NNNa, and RRRa, these standards include the performance standards when the affected facilities are operational and work practice standards that will apply during periods of startup and shutdown (including when maintenance and inspection activities are being conducted). The NSPS general provisions in 40 CFR 60.8(c) contain an exemption from non-opacity standards. Therefore, we are also proposing in NSPS subparts VVb, IIIa, NNNa, and RRRa specific requirements at 40 CFR 60.482–1b, 40 CFR 60.612a, 40 CFR 60.662a, and 40 CFR 60.702a, respectively that override the general provisions for SSM. Accordingly, our proposed NSPS subparts VVb, IIIa, NNNa, and RRRa would include standards that apply at all times, including during periods of startup and shutdown.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. Malfunctions, in contrast, are neither predictable nor routine. Instead they are, by definition, sudden, infrequent, and not reasonably preventable failures of emissions control, process, or monitoring equipment. (40 CFR 60.2). The EPA interprets CAA section 111 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 111 standards. Nothing in CAA section 111 or in case law requires that the EPA consider malfunctions when determining what standards of performance reflect the degree of emission limitation ''achievable through the application of the best system of emission reduction'' that the EPA determines is adequately demonstrated. While the EPA accounts for variability in setting emissions standards, the EPA is not required to treat a malfunction in

the same manner as the type of variation in performance that occurs during routine operations of a source. A malfunction is a failure of the source to perform in a ''normal or usual manner'' (40 CFR 60.2), and no statutory language compels the EPA to consider such events in setting section 111 standards of performance. The EPA's approach to malfunctions when interpreting analogous language under CAA section 112 has been upheld as reasonable by the D.C. Circuit in *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–610 (D.C. Cir. 2016) (affirming as reasonable the EPA's approach to setting ''achievable'' standards under section 112 as measured by the ''best controlled similar source'' without considering malfunctions, instead accounting for them in its enforcement discretion).

Also, as previously discussed, although no statutory language compels the EPA to set standards for malfunctions, the EPA has the discretion to do so where feasible. The EPA is proposing to establish work practice standards for unique types of malfunction that result in releases from emergency flaring events because the EPA had information to determine that such work practices reflected the level of control that applies to the BSER. The EPA will consider whether circumstances warrant setting standards for a particular type of malfunction in the SOCMI NSPS rules, and, if so, whether the EPA has sufficient information to identify the relevant best performing sources and establish a standard for such malfunctions. We also encourage commenters to provide any such information. These are discussed further in sections III.D.1, III.C.3.b, and III.C.6.b of this preamble.

2. Affirmative Defense (Related to P&R I)

As part of one of the P&R I RTR rulemakings (see 77 FR 22566, April 21, 2011), the EPA included the ability to assert an affirmative defense to civil penalties for violations caused by malfunctions (see 40 CFR 63.480(j)(4)) in an effort to create a system that incorporated some flexibility, recognizing that there is a tension, inherent in many types of air regulation, to ensure adequate compliance while simultaneously recognizing that despite the most diligent of efforts, emission standards may be violated under circumstances entirely beyond the control of the source.[154] Although the EPA recognized that its case-by-case enforcement discretion provides sufficient flexibility in these circumstances, it included the affirmative defense provision to provide a more formalized approach and more regulatory clarity. See *Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1057–58 (D.C. Cir. 1978) (holding that an informal case-by-case enforcement discretion approach is adequate); but see *Marathon Oil Co.* v. *EPA,* 564 F.2d 1253, 1272–73 (9th Cir. 1977) (requiring a more formalized approach to consideration of ''upsets beyond the control of the permit holder.''). Under the EPA's regulatory affirmative defense provisions, if a source could demonstrate in a judicial or administrative proceeding that it had met the requirements of the affirmative defense in the regulation, civil penalties would not be assessed. However, the court vacated the affirmative defense in one of the EPA's CAA section 112 regulations. *NRDC* v. *EPA,* 749 F.3d 1055 (D.C. Cir., 2014) (vacating affirmative defense provisions in the CAA section 112 rule establishing emission standards for Portland cement kilns). The court found that the EPA lacked authority to establish an affirmative defense for private civil suits and held that under the CAA, the authority to determine civil penalty amounts in such cases lies exclusively with the courts, not the EPA. Specifically, the court found: ''As the language of the statute makes clear, the courts determine, on a case-by-case basis, whether civil penalties are 'appropriate.'" See *NRDC,* 749 F.3d at 1063 (''[U]nder this statute, deciding whether penalties are 'appropriate' in a given private civil suit is a job for the courts, not EPA.'').[155] In light of *NRDC,* the EPA is proposing to remove all of the regulatory affirmative defense provisions from P&R I at 40 CFR 480(j)(4) in its entirety and all other rule text that references these provisions (*i.e.,* the reference to ''§ 63.480(j)(4)'' in 40 CFR 63.506(b)(1)(i)(A) and (b)(1)(i)(B)). As explained above, if a source is unable to comply with emissions standards as a result of a malfunction, the EPA may use its case-by-case enforcement discretion to provide flexibility, as appropriate. Further, as the court recognized, in an EPA or citizen enforcement action, the court has the discretion to consider any defense raised and determine whether penalties are appropriate. *Cf. NRDC,* 749 F.3d at 1064 (arguments that violation was caused by unavoidable technology failure can be made to the courts in future civil cases when the issue arises). The same is true for the presiding officer in EPA administrative enforcement actions.[156]

3. Electronic Reporting

The EPA is proposing that owners and operators of SOCMI processes located at chemical plants submit electronic copies of required performance test reports, flare management plans, and periodic reports (including fenceline monitoring reports) through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI) (see proposed 40 CFR 63.108(e), 40 CFR 63.152(c) and (h), and 40 CFR 63.182(d) and (e) (for HON), 40 CFR 63.506(e)(6), and (i)(3) (for P&R I), and 40 CFR 63.528(a) and (d) (for P&R II), 40 CFR 60.486(l), and 60.487(a) and (g) through (i) (for NSPS subpart VV), 40 CFR 60.486a(l), and 60.487a(a) and (g) through (i) (for NSPS subpart VVa), 40 CFR 60.486b(l), and 60.487b(a) and (g) through (i) (for NSPS subpart VVb), 40 CFR 60.615(b), (j), (k), and (m) through (o) (for NSPS subpart III), 40 CFR 60.615a(b), (h) through (l), and (n), and 40 CFR 619a(e) (for NSPS subpart IIIa), 40 CFR 60.665(b), (l), (m), and (q) through (s) (for NSPS subpart NNN), 40 CFR 60.665a(b), (h), (k) through (n), and (p), and 40 CFR 669a(e) (for NSPS subpart NNNa), 40 CFR 60.705(b), (l), (m), and (u) through (w) (for NSPS subpart RRR), and 40 CFR 60.705a(b), (k) through (o), and (v), and 40 CFR 709a(e) (for NSPS subpart RRRa)). We note that for NSPS VV, VVa, III, NNN, and RRR, we are only proposing to change the format of the reporting requirements to require electronic reporting (*i.e.,* we are not proposing any new data elements). A description of the electronic data submission process is provided in the document titled *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* available in the docket for this action.

The proposed rules require that performance test results collected using test methods that are supported by the

[154] We note that the HON and P&R II do not include affirmative defense rule text.

[155] The court's reasoning in *NRDC* focuses on civil judicial actions. The court noted that ''EPA's ability to determine whether penalties should be assessed for CAA violations extends only to administrative penalties, not to civil penalties imposed by a court.'' *Id.*

[156] Although the *NRDC* case does not address the EPA's authority to establish an affirmative defense to penalties that are available in administrative enforcement actions, we are not including such an affirmative defense in the proposed rule. As explained above, such an affirmative defense is not necessary. Moreover, assessment of penalties for violations caused by malfunctions in administrative proceedings and judicial proceedings should be consistent. *Cf.* CAA section 113(e) (requiring both the Administrator and the court to take specified criteria into account when assessing penalties).

EPA's Electronic Reporting Tool (ERT) as listed on the ERT website [157] at the time of the test be submitted in the format generated through the use of the ERT or an electronic file consistent with the xml schema on the ERT website, and other performance test results be submitted in portable document format (PDF) using the attachment module of the ERT. Flare management plans would be uploaded as a PDF file.

For periodic reports (including fenceline monitoring reports), the proposed rules require that owners and operators use an appropriate spreadsheet template to submit information to CEDRI. A draft version of the proposed templates for these reports is included in the docket for this action.[158] The EPA specifically requests comment on the content, layout, and overall design of the templates. For NSPS subpart VV, VVa, III, NNN, and RRR, we are proposing owners and operators begin using the templates one year after the final rule is published in the **Federal Register** or once the reporting template for the subpart has been available on the CEDRI website for 1 year, whichever date is later. For NSPS subparts VVb, IIIa, NNNa, and RRRa, we are proposing owners and operators begin using the templates 60 days after the final rule is published in the **Federal Register** or once the reporting template for the subpart has been available on the CEDRI website for 1 year, whichever date is later. For HON, P&R I, and P&R II, we are proposing owners and operators begin using the templates for periodic reports other than fenceline reports three years after the final rule is published in the **Federal Register**, or once the reporting template for the subpart has been available on the CEDRI website for 1 year, whichever date is later. Owners and operators would begin using the templates for fenceline monitoring reports starting when the first fenceline monitoring report is due.

Additionally, the EPA has identified two broad circumstances in which electronic reporting extensions may be provided. These circumstances are: (1) Outages of the EPA's CDX or CEDRI which preclude an owner or operator from accessing the system and submitting required reports and (2) *force majeure* events, which are defined as events that will be or have been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevent an owner or operator from complying with the requirement to submit a report electronically. Examples of *force majeure* events are acts of nature, acts of war or terrorism, or equipment failure or safety hazards beyond the control of the facility. The EPA is providing these potential extensions in NSPS subparts VVb, IIIa, NNNa, and RRRa (see proposed 40 CFR 60.487b (h) and (i), 40 CFR 60.615a (j) and (k), 40 CFR 60.665a(l) and (m), and 40 CFR 60.705(m) and (n), respectively) to protect owners and operators from noncompliance in cases where they cannot successfully submit a report by the reporting deadline for reasons outside of their control. In both circumstances, the decision to accept the claim of needing additional time to report is within the discretion of the Administrator, and reporting should occur as soon as possible. These potential extensions are not necessary to add to the HON, P&R I, and P&R II because they were recently added to 40 CFR part 63, subpart A, General Provisions at 40 CFR 63.9(k).

The electronic submittal of the reports addressed in these proposed rulemakings will increase the usefulness of the data contained in those reports, is in keeping with current trends in data availability and transparency, will further assist in the protection of public health and the environment, will improve compliance by facilitating the ability of regulated facilities to demonstrate compliance with requirements and by facilitating the ability of delegated state, local, tribal, and territorial air agencies and the EPA to assess and determine compliance, and will ultimately reduce burden on regulated facilities, delegated air agencies, and the EPA. Electronic reporting also eliminates paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public. Moreover, electronic reporting is consistent with the EPA's plan [159] to implement Executive Order 13563 and is in keeping with the EPA's Agency-wide policy [160] developed in response to the White House's Digital Government Strategy.[161] For more information on the benefits of electronic reporting, see the document titled *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* referenced earlier in this section.

4. NSPS Subpart VVa Reconsideration Issues

In January 2008, the EPA received one petition for reconsideration of the NSPS subpart VVa rulemaking pursuant to CAA section 307(d)(7)(B) from the following petitioners: American Chemistry Council, American Petroleum Institute, and National Petrochemical and Refiners Association (now the American Fuel and Petrochemical Manufacturers). See section II.A.3 of this preamble for additional details about this petition for reconsideration. On June 2, 2008, the EPA indicated (73 FR 31372) that it would be publishing a **Federal Register** notice in response to the petition for reconsideration on: (1) The clarification of the definition of process unit in subparts VV, VVa, GGG, and GGGa; (2) the assignment of shared storage vessels to specific process units in subparts VV, VVa, GGG, and GGGa at 40 CFR 60.481a and 40 CFR 60.482–1a(g); (3) the monitoring of connectors in subpart VVa at 40 CFR 60.482–11a; and (4) the definition of capital expenditure in subpart VVa at 40 CFR 60.481a. These provisions were stayed pending resolution of the reconsideration.[162] This action does not respond to the reconsideration of NSPS subparts GGG and GGGa, as the EPA is not reviewing those subparts in this action and instead is only proposing to address issues 1 through 4 for subparts VV and VVa.

On November 16, 2007, the EPA promulgated amendments to the NSPS subpart VV as well as new equipment leak requirements in NSPS subpart VVa.

[157] *https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert.*

[158] See Part_60_Subpart_VV_60.487(a)_Semiannual_Report.xlsx, Part_60_Subpart_III_60.615_Semiannual_Report.xlsx, Part_60_Subpart_NNN_60.665_Report.xlsx, Part_60_Subpart_RRR_60.705_Report.xlsx, Part_63_Subpart_G_63.152(c)_Periodic_Report.xlsx, Part_63_Subpart_H_63.182(d)_Periodic_Report.xlsx, Part_63_Subpart_H_63.182(e)_Fenceline_Quarterly_Report.xlsx, Part_63_Subpart_U_63.506(e)(6)_Periodic_Report.xlsx, and Part_63_Subpart_W_63.528(a)_Periodic_Report.xlsx, available in the docket for this action.

[159] EPA's Final Plan for Periodic Retrospective Reviews, August 2011. Available at: *https://www.regulations.gov/document?D=EPA-HQ-OA-2011-0156-0154.*

[160] E-Reporting Policy Statement for EPA Regulations, September 2013. Available at: *https://www.epa.gov/sites/production/files/2016-03/documents/epa-ereporting-policy-statement-2013-09-30.pdf.*

[161] Digital Government: Building a 21st Century Platform to Better Serve the American People, May 2012. Available at: *https://obamawhitehouse.archives.gov/sites/default/files/omb/egov/digital-government/digital-government.html.*

[162] The EPA only granted reconsideration of issues 2 through 4 in their March 4, 2008 letter to petitioners, however, we are proposing reconsideration on issue 1 (the clarification of the definition of process unit) as well because of its reliance on issue 2 (the assignment of shared storage vessels to specific process units).

As part of the rulemaking, the EPA finalized a definition for ''process unit'' that included a phrase that a process unit ''includes all equipment as defined in this subpart'' which was intended to clarify what equipment was covered by the rule. However, petitioners stated that the ''EPA must reconsider its 'clarification' of the definition of process unit'' because ''the new process unit definition is inconsistent with the originally promulgated definition.'' The petitioners alleged that the new definition ''substantially expands'' the definition of process unit, thereby expanding applicability of the NSPS ''to equipment not previously subject to those requirements.'' They also state that because the EPA characterized this change as a ''clarification,'' we failed to solicit and consider public comments on the impacts of this requirement for both existing and new SOCMI facilities. After further review, the November 16, 2007, definition is imprecise with respect to the usage of the terms ''equipment'' versus ''components.'' Equipment is a separately defined term and should not be included within the definition of process unit to establish applicability. The reader instead should be able to refer to 40 CFR 60.480(a) (for NSPS subpart VV) and 40 CFR 60.480a(a) (for NSPS subpart VVa) for applicability and designation of the affected facility and refer to 40 CFR 60.481 (for NSPS subpart VV) and 40 CFR 60.481a (for NSPS subpart VVa) for definitions of terms used within the applicability section. Therefore, we are proposing to revert back to the same definition for ''process unit'' that is currently being used in NSPS subpart VV and NSPS subpart VVa according to the stay requirements. For NSPS subpart VV, we are proposing that ''process unit'' means components assembled to produce, as intermediate or final products, one or more of the chemicals listed in 40 CFR 60.489 of this part. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the product. For NSPS subpart VVa, we are proposing that ''process unit'' means components assembled to produce, as intermediate or final products, one or more of the chemicals listed in 40 CFR 60.489a of this part. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the product. These proposed definitions for ''process unit'' for NSPS subparts VV and VVa avoid accidentally retroactively expanding coverage of NSPS subparts VV and VVa to previously uncovered facilities.

Also, as part of the November 16, 2007 rulemaking, the EPA finalized procedures at 40 CFR 60.482–1(g) (for NSPS subpart VV) and 40 CFR 60.482–1a(g) (for NSPS subpart VVa) intended to clarify how to assign storage vessels that are shared among multiple process units to a specific process unit. The EPA also revised the process unit definition at 40 CFR 60.481 (for NSPS subpart VV) and 40 CFR 60.481a (for NSPS subpart VVa) because of its reliance upon the new provision on the allocation of shared storage vessels. Petitioners stated that the EPA did not propose its method for addressing shared storage vessels in the proposed rules published November 7, 2006, giving no opportunity for public comment. The petitioners alleged that the allocation of shared storage vessels is a new requirement ''that cannot lawfully be imposed, with or without notice and comment, on existing sources.'' After further review, we are proposing that a method for assigning shared storage vessels to specific process units is not needed. Therefore, we are proposing to remove the requirements in 40 CFR 60.482–1(g) (for NSPS subpart VV) and 40 CFR 60.482–1a(g) (for NSPS subpart VVa). For sources subject to NSPS subparts VV and VVa, any storage vessel that is located within the battery limits [163] of a process unit is already associated with that process unit; therefore, allocation is not necessary. We are soliciting comment on this proposed decision, specifically regarding situations when allocation would be necessary.

In the November 16, 2007, rulemaking, the EPA finalized new connector monitoring requirements for SOCMI units. Petitioners stated that the ''EPA must reconsider its new connector monitoring requirements for SOCMI units, as the regulated community was denied notice of and an opportunity to comment on this requirement.'' The Petitioners stated that the ''EPA expanded the definition of connector in the final rule without notice and an opportunity to comment.'' The EPA agrees that it did not include these new requirements and this new definition in its proposal published on November 7, 2006. Therefore, we are proposing to remove the connector monitoring provisions from NSPS subpart VVa at 40 CFR 60.482–11a in their entirety. Instead, we are reproposing connector monitoring provisions in NSPS subpart VVb (see section III.C.6.b of this preamble).

Lastly, in the November 16, 2007 rulemaking, the EPA finalized a definition of ''capital expenditure'' in NSPS subpart VVa. Petitioners stated that the ''EPA must reconsider its new definition of 'capital expenditure' in subpart VVa, which was never proposed and which retroactively triggers 'modification' status for facility changes commenced since November 7, 2006.'' The petitioners' concern was specifically limited to the retroactive application, and not application after November 16, 2007, and they did not seek reconsideration with respect to the change in the definition of capital expenditure generally. Therefore, we are proposing to revise the ''capital expenditure'' definition in NSPS subpart VVa at 40 CFR 60.481a to reflect the definition used in NSPS subpart VV at 40 CFR 60.481 for owners or operators that start a new, reconstructed, or modified affected source prior to November 16, 2007 (as is currently required in NSPS subpart VVa due to the stayed provisions). Specifically, we are proposing that the value of ''X'' in the capital expenditure definition in 40 CFR 60.481a be 1982 minus the year of construction for owners or operators that start a new, reconstructed, or modified affected source prior to November 16, 2007, because using any more recent year than 1982 as ''X'' in the equation would require owners and operators to determine former (historical) capital expenditures in order to meet modification and reconstruction requirements. This would not be practical given that a significant amount of time has passed since the capital expenditure provisions were stayed. However, we are proposing to update the definition of ''capital expenditure'' in NSPS subpart VVb for evaluating changes that occur at existing SOCMI facilities after April 25, 2023. We are proposing that the value of ''X'' in the

[163] Statements made in the 1981 proposal preamble (46 FR 1136, January 5, 1981) provide our clear intent of the components included in the definition of process unit. First, the EPA specifically stated that ''[a] process unit includes intermediate storage or surge tanks and all fluid transport equipment connecting the reaction, separation and purification devices.'' 46 FR 1139. This statement clarified that the definition includes components indirectly but still integrally involved in ''producing'' the chemical (*i.e.,* not a reaction, separation or purification unit operation). Second, EPA stated: ''All equipment within the battery limits is included'' but that ''offsite fluid transport and storage facilities are excluded.'' *Id.* These terms, ''within the battery limits'' and ''offsite,'' are industry terms of art used throughout the SOCMI and petroleum refining industry. ''Within the battery limits'' refers to the boundary around the components assembled to perform a specific process function or to produce a product, whereas ''offsite'' refers to locations outside the fence line of a facility. By using these terms, the EPA was emphasizing that all components are part of the ''process unit'' if contained within the battery limit boundary, but are not part of the process unit if located ''offsite.'' *Id.*

capital expenditure definition in 40 CFR 60.481b be 2023 minus the year of construction, where the date of original construction was after January 6, 1982, but before January 1, 2023. Where the date of original construction was on or after January 1, 2023, but on or before April 25, 2023, we are proposing the value of X be 1.

5. Technical and Editorial Changes

We are proposing several technical amendments and definition revisions to improve the clarity and enforceability of certain provisions in the HON, P&R I, and P&R II, and NSPS subpart VVa. These additional proposed revisions and our rationale for the proposed revisions are described in this section.

a. HON Definition Sections

In an effort to remove redundancy and improve consistency, we are proposing to move all of the definitions from NESHAP subparts G and H (*i.e.,* 40 CFR 63.111 and 40 CFR 63.161, respectively) into the definition section of NESHAP subpart F (*i.e.,* 40 CFR 63.101). We are proposing new text in 40 CFR 63.111 to point to 40 CFR 63.101, as follows: ''All terms used in this subpart shall have the meaning given them in the Act and in subpart F of this part.'' We are proposing new text in 40 CFR 63.161 to point to 40 CFR 63.101, as follows: ''All terms used in this subpart shall have the meaning given them in the Act and in subpart F of this part, except as provided in any subpart that references this subpart.'' We are also proposing to revise certain terms that have minor differences between their definition in these subparts. See Table 30 for additional details. These proposed changes will resolve inconsistencies that lead to interpretation issues between each of these subparts. We are not proposing to combine the definitions from NESHAP subpart I into the definitions section of NESHAP subpart F because those definitions are specifically for negotiated non-SOCMI processes.

TABLE 30—PROPOSED DEFINITION CHANGES TO RESOLVE MINOR DIFFERENCES BETWEEN NESHAP F, G, AND H

Current definition in NESHAP subpart F	Current definition in NESHAP subpart G	Current definition in NESHAP subpart H	Proposed revised definition in NESHAP subpart F
None	*Closed-vent system* means a system that is not open to the atmosphere and is composed of piping, ductwork, connections, and, if necessary, flow inducing devices that transport gas or vapor from an emission point to a control device.	*Closed-vent system* means a system that is not open to the atmosphere and that is composed of hard-piping, ductwork, connections and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device or back into a process.	*Closed-vent system* means a system that is not open to the atmosphere and is composed of piping, ductwork, connections, and, if necessary, flow inducing devices that transport gas or vapor from an emission point to a control device.
Control device means any combustion device, recovery device, or recapture device. Such equipment includes, but is not limited to, absorbers, carbon adsorbers, condensers, incinerators, flares, boilers, and process heaters. For process vents (as defined in this section), recapture devices are considered control devices but recovery devices are not considered control devices. For a steam stripper, a primary condenser is not considered a control device.	*Control device* means any combustion device, recovery device, or recapture device. Such equipment includes, but is not limited to, absorbers, carbon adsorbers, condensers, incinerators, flares, boilers, and process heaters. For process vents, recapture devices are considered control devices but recovery devices are not considered control devices, and for a steam stripper, a primary condenser is not considered a control device.	*Control device* means any equipment used for recovering, recapturing, or oxidizing organic hazardous air pollutant vapors. Such equipment includes, but is not limited to, absorbers, carbon adsorbers, condensers, flares, boilers, and process heaters.	*Control device* means any combustion device, recovery device, or recapture device. Such equipment includes, but is not limited to, absorbers, carbon adsorbers, condensers, incinerators, flares, boilers, and process heaters. For process vents, recapture devices are considered control devices but recovery devices are not considered control devices, and for a steam stripper, a primary condenser is not considered a control device.
None	*First attempt at repair* means to take action for the purpose of stopping or reducing leakage of organic material to the atmosphere.	*First attempt at repair* means to take action for the purpose of stopping or reducing leakage of organic material to the atmosphere, followed by monitoring as specified in § 63.180 (b) and (c), as appropriate, to verify whether the leak is repaired, unless the owner or operator determines by other means that the leak is not repaired.	*First attempt at repair* means to take action for the purpose of stopping or reducing leakage of organic material to the atmosphere, followed by monitoring as specified in § 63.180 (b) and (c), as appropriate, to verify whether the leak is repaired, unless the owner or operator determines by other means that the leak is not repaired.
Initial start-up means the first time a new or reconstructed source begins production, or, for equipment added or changed as described in § 63.100 (l) or (m) of this subpart, the first time the equipment is put into operation. Initial start-up does not include operation solely for testing equipment. For purposes of subpart G of this part, initial start-up does not include subsequent start-ups (as defined in this section) of chemical manufacturing process units following malfunctions or shutdowns or following changes in product for flexible operation units or following recharging of equipment in batch operation. For purposes of subpart H of this part, initial start-up does not include subsequent start-ups (as defined in § 63.161 of subpart H of this part) of process units (as defined in § 63.161 of subpart H of this part) following malfunctions or process unit shutdowns.	None	*Initial start-up* means the first time a new or reconstructed source begins production. Initial start-up does not include operation solely for testing equipment. Initial start-up does not include subsequent start-ups (as defined in this section) of process units following malfunctions or process unit shutdowns.	*Initial start-up* means the first time a new or reconstructed source begins production, or, for equipment added or changed as described in § 63.100 (l) or (m) of this subpart, the first time the equipment is put into operation. Initial start-up does not include operation solely for testing equipment. For purposes of subpart G of this part, initial start-up does not include subsequent start-ups (as defined in this section) of chemical manufacturing process units following malfunctions or shutdowns or following changes in product for flexible operation units or following recharging of equipment in batch operation. For purposes of subpart H of this part, initial start-up does not include subsequent start-ups (as defined in § 63.161 of subpart H of this part) of process units (as defined in § 63.161 of subpart H of this part) following malfunctions or process unit shutdowns.

TABLE 30—PROPOSED DEFINITION CHANGES TO RESOLVE MINOR DIFFERENCES BETWEEN NESHAP F, G, AND H—Continued

Current definition in NESHAP subpart F	Current definition in NESHAP subpart G	Current definition in NESHAP subpart H	Proposed revised definition in NESHAP subpart F
None	*Process unit* has the same meaning as chemical manufacturing process unit as defined in this section.	*Process unit* means a chemical manufacturing process unit as defined in subpart F of this part, a process subject to the provisions of subpart I of this part, or a process subject to another subpart in 40 CFR part 63 that references this subpart.	*Process unit* means a chemical manufacturing process unit as defined in subpart F of this part, a process subject to the provisions of subpart I of this part, or a process subject to another subpart in 40 CFR part 63 that references this subpart.
Surge control vessel means feed drums, recycle drums, and intermediate vessels. Surge control vessels are used within a chemical manufacturing process unit when in-process storage, mixing, or management of flow rates or volumes is needed to assist in production of a product.	*Surge control vessel* means feed drums, recycle drums, and intermediate vessels. Surge control vessels are used within a chemical manufacturing process unit when in-process storage, mixing, or management of flow rates or volumes is needed to assist in production of a product.	*Surge control vessel* means feed drums, recycle drums, and intermediate vessels. Surge control vessels are used within a process unit (as defined in the specific subpart that references this subpart) when in-process storage, mixing, or management of flow rates or volumes is needed to assist in production of a product.	*Surge control vessel* means feed drums, recycle drums, and intermediate vessels. Surge control vessels are used within a chemical manufacturing process unit when in-process storage, mixing, or management of flow rates or volumes is needed to assist in production of a product.

Finally, we are also proposing editorial changes that clarify reference citations in the definitions (to properly point to the correct HON subpart) for ''annual average concentration,'' ''annual average flow rate,'' ''closed biological treatment process,'' ''compliance date,'' ''connector,'' ''continuous record,'' ''equipment leak,'' ''group 1 process vent,'' ''group 1 storage vessel,'' ''group 1 wastewater stream,'' ''group 2 process vent,'' ''halogenated vent stream,'' ''in organic hazardous air pollutant service,'' ''in volatile organic compound service,'' ''instrumentation system,'' ''point of determination,'' ''process vent,'' ''process wastewater stream,'' ''recovery device,'' ''reference control technology for storage vessels,'' ''reference control technology for wastewater,'' ''repaired,'' ''table 8 compound,'' ''table 9 compound,'' ''total resource effectiveness index value,'' ''treatment process,'' ''wastewater,'' and ''wastewater stream''.

b. Monitoring for Adsorbers That Cannot Be Regenerated and Regenerative Adsorbers That Are Regenerated Offsite

We are proposing to add monitoring requirements at 40 CFR 63.114(a)(5)(v), 40 CFR 63.120(d)(1)(iii), 40 CFR 63.127(b)(4), and 40 CFR 63.139(d)(5) (for HON), and 40 CFR 63.484(t), 40 CFR 63.485(x), and 40 CFR 63.489(b)(10) (for P&R I) for adsorbers that cannot be regenerated and regenerative adsorbers that are regenerated offsite because the HON and P&R I do not currently include specific monitoring requirements for this type of APCD.[164] We are proposing owners and operators of this type of APCD use dual adsorbent beds in series. We have prescribed a dual bed system because the use of a single bed does not ensure continuous compliance unless the bed is replaced significantly before breakthrough.[165] The proposed monitoring requirements for non-regenerative adsorbers fulfill the EPA's obligation to establish monitoring requirements to ensure continuous compliance with the emission limits (*e.g.,* 98-percent control or a 20 ppm TOC outlet concentration) when owners or operators are using these types of control devices to comply with the standards. A dual bed system will allow one bed to be saturated before it is replaced and, therefore, makes efficient use of the adsorber bed without exceeding the emission limits.

Similar to regenerative adsorbers, in order to monitor performance deterioration, we are proposing measurements of HAP or TOC using a portable analyzer or chromatographic analysis for non-regenerative absorbers. We are proposing that these measurements be taken on the outlet of the first adsorber bed in series using a sample port; and they be taken monthly (if the bed has at least two months of the bed design life remaining), weekly (if the bed has between two months and two weeks of bed design life remaining), or daily (once the bed has less than two weeks of bed design life remaining). Also, owners and operators would be required to establish an average adsorber bed life from a design evaluation as well as conduct monitoring no later than 3 days after a bed is put into service as the first bed to confirm that it is functioning properly.

We used the EPA's cost algorithms to estimate the cost of a second carbon adsorber bed for two adsorber scenarios. In the first scenario, the EPA estimated the cost of a replaceable-canister type adsorber holding 180 lbs of carbon. The total capital investment of the second bed (including installation and auxiliary equipment) is about $6,000, and the total annual cost is about $800. In the second scenario, we estimated the cost of an adsorber that holds 3,000 lbs of carbon and in which the carbon is removed and replaced by fresh carbon when needed. The total capital investment of the second bed (including installation and auxiliary equipment) is about $26,600, and the total annual cost is about $2,250. We assumed no additional labor would be required for operation and maintenance of the second adsorber bed compared to operating and maintaining a single bed adsorber. A more thorough discussion of this analysis is included in the document titled *Analysis of Monitoring Costs and Dual Bed Costs for Non-Regenerative Carbon Adsorbers Used in the SOCMI Source Category that are Associated with Processes Subject to HON and for Non-Regenerative Carbon Adsorbers that are Associated with Processes Subject to Group I Polymers and Resins NESHAP,* which is available in the docket for this rulemaking.

We anticipate that the use of two beds in series and the use of monitoring will maximize the life of each bed and reduce adsorber media replacement costs. In both scenarios described above, we assumed that the first bed would be replaced when it reached breakthrough (*i.e.,* its equilibrium capacity, which is when the adsorption zone of the bed reaches the bed outlet and the volatile

[164] We did not find any P&R II facilities that have processes controlled by adsorbers.

[165] We are proposing to define the term ''breakthrough'' at 40 CFR 63.101 (for HON) and 40 CFR 63.482 (for P&R I) to mean the time when the level of HAP or TOC detected is at the highest concentration allowed to be discharged from an adsorber system.

concentration in the exhaust begins to rise) based on monitoring at the outlet of the first bed. At that time, the owner or operator would divert the flow from the first to the second bed, the canisters or carbon would be replaced in the first bed, and it would then be returned to service as the second bed in the series. We did not include the cost of replacing the canisters or the carbon in the annual costs because the amount of carbon used would not increase as a result of using a second bed in series. We anticipate that having two beds in series and performing monitoring at the outlet of the first bed will reduce the amount of adsorber media (*e.g.,* activated carbon) used by facilities because they will not have to replace the adsorber media until it reaches equilibrium capacity. With only a single bed and no monitoring, facilities would need to replace the adsorber media more frequently based on the estimated working capacity of the bed (which is a fraction of the equilibrium capacity) so as to maintain compliance and to avoid exceeding outlet concentration limits.

As previously mentioned in section III.C.3.b of this preamble, we are also proposing these same monitoring requirements for NSPS subpart IIIa, NNNa, and RRRa under CAA section 111(b)(1)(B). The EPA acknowledges that these proposed requirements could be considered under CAA section 112(d)(6) because of the specification to have two adsorber beds in series, instead of as a proposed change to the monitoring requirements. However, our rationale for why a second bed is needed would not be any different if we described these proposed changes under CAA section 112(d)(6) instead of as a monitoring change. These changes are being proposed because the current HON and P&R I contain no monitoring requirements for non-regenerative adsorbers.

c. Calibration Drift Assessment (Related to NSPS Subpart VVa)

We are proposing several corrections to the calibration drift assessment requirements in NSPS subpart VVa at 40 CFR 60.485a(b)(2). These amendments are being proposed to: (1) Correct a regulatory citation to read ''§ 60.486a(e)(8)'' instead of ''§ 60.486a(e)(7)''; (2) remove the extraneous sentence ''Calculate the average algebraic difference between the three meter readings and the most recent readings and the most recent calibration value.''; (3) provide clarity in the mathematical step of the assessment by replacing the sentence ''Divide this algebraic difference by the initial calibration value and multiply by 100 to express the calibration drift as a percentage.'' with ''Divide the arithmetic difference of the initial and post-test calibration response by the corresponding calibration gas value for each scale and multiply by 100 to express the calibration drift as a percentage.''; and (4) provide clarity by making other minor textural changes to the provisions related to the procedures for when a calibration drift assessment shows negative or positive drift of more than 10 percent. We note that we are proposing these same calibration drift assessment requirements in NSPS subpart VVb at 40 CFR 60.485b(b)(2).

d. Control of Sweep, Purge, and Inert Blankets From IFRs

The EPA is proposing that owners and operators that use a sweep, purge, or inert blanket between the IFR and fixed roof of a storage vessel would be required to route emissions through a closed vent system and control device (see proposed 40 CFR 63.119(b)(7)).

e. Overlap Provisions

The EPA is proposing to remove the provisions that allow compliance with certain portions of 40 CFR part 264, subpart AA or CC in lieu of portions of NESHAP subpart G (see proposed 40 CFR 63.110(h)) because revisions being proposed in the HON are and not reflective of the same standards and associated monitoring, recordkeeping, and reporting requirements for certain control devices such as flares. In addition, requiring all facilities to have the same set of monitoring, recordkeeping, and reporting requirements allows for better enforceability of the rule by the EPA.

Also, the EPA is proposing to remove the provisions that allow compliance with certain portions of 40 CFR part 65 in lieu of portions of NESHAP subparts G and H (see proposed 40 CFR 63.110(i) and 40 CFR 60.160(g)) because our proposed requirements for HON processes (*i.e.,* requirements we are proposing for heat exchange systems, storage vessels, process vents, transfer racks, wastewater, and equipment leaks) are more stringent than those required by 40 CFR part 65.

f. Other Editorial Corrections

The EPA is proposing additional changes that address technical and editorial corrections for the HON as follows:

- The EPA is proposing to remove the word ''Organic'' before Hazardous Air Pollutants from the 40 CFR part 63 titles of subparts F through I to reflect the acronym NESHAP more accurately and for consistency in naming convention across all 40 CFR part 63 subparts; and
- The EPA is proposing to add the phrase ''and Fenceline Monitoring for All Emission Sources'' to the title of NESHAP subpart H to reflect the contents of the NESHAP more accurately. The EPA is proposing to include fenceline monitoring standards in NESHAP subpart H (see section III.C.7 of this preamble).

6. Listing of 1-bromopropane as a HAP

On January 5, 2022, the EPA published in the **Federal Register** (87 FR 393) a final rule amending the list of HAP under the CAA to add 1-bromopropane (1-BP) in response to public petitions previously granted by the EPA. For the source categories covered by the HON, P&R I, and P&R II, we do not believe that the inclusion of 1-BP as an organic HAP would have any effect on the MACT standards. First, 1-BP is not a SOCMI chemical. Furthermore, we have no information showing that 1-BP is used, produced, or emitted to make any SOCMI chemicals regulated by the HON, and we are unaware of any information showing that it is used, produced, or emitted in the production of any of the polymers and resins processes covered by the P&R I or P&R II. Accordingly, we believe there is no further action required by the EPA needed to address emissions of 1-BP from these source categories. We solicit comment on this approach, and should new information submitted to the EPA show that 1-BP is emitted from these source categories, the EPA will consider this information in the context of developing any MACT standards that may be needed to address emissions of 1-BP. We also note that in many instances in the HON and P&R I, many MACT emission standards allow facilities to comply with a total organic compound concentration standard (*e.g.,* 20 ppmv), which could adequately regulate emissions of 1-BP should we receive additional information that it is emitted from these source categories.

F. What compliance dates are we proposing, and what is the rationale for the proposed compliance dates?

1. HON, P&R I, and P&R II

The proposed amendments to the HON, P&R I, and P&R II in this rulemaking for adoption under CAA section 112(d)(2) and (3) (see section III.D of this preamble) and CAA section 112(d)(6) (see section III.C of this preamble) are subject to the compliance deadlines outlined in the CAA under section 112(i). The proposed amendments to the HON and P&R I in

this rulemaking for adoption under CAA section 112(f) (see section III.C of this preamble) are subject to the compliance deadlines outlined in the CAA under section 112(f)(4).

For all of the requirements we are proposing under CAA sections 112(d)(2), (3), and (d)(6), we are proposing that all existing affected sources and all affected sources that were new sources under the current HON and P&R I (*i.e.,* they commenced construction or reconstruction after December 31, 1992 (for HON) or after June 12, 1995 (for P&R I), and on or before April 25, 2023), must comply with all of the amendments no later than 3 years after the effective date of the final rule, or upon startup, whichever is later. For existing sources, CAA section 112(i) provides that the compliance date shall be as expeditious as practicable, but no later than 3 years after the effective date of the standard. (''Section 112(i)(3)'s three-year maximum compliance period applies generally to any emission standard . . . promulgated under [section 112].'' *Association of Battery Recyclers* v. *EPA,* 716 F.3d 667, 672 (D.C. Cir. 2013)). In determining what compliance period is as expeditious as practicable, we consider the amount of time needed to plan and construct projects and change operating procedures. As provided in CAA section 112(i) and 5 U.S.C. 801(3), all new affected sources that commenced construction or reconstruction after April 25, 2023 would be required to comply with these requirements within 60 days after the publication of the final amendments to the HON, P&R I, and P&R II standards or upon startup, whichever is later.

For all of the requirements we are proposing under CAA sections 112(f), we are proposing a compliance date of 2 years after the effective date of the final rule, or upon startup, whichever is later for all existing affected sources and for all affected sources that were new sources under the current HON and P&R I (*i.e.,* they commenced construction or reconstruction after December 31, 1992 (for HON) or after June 12, 1995 (for P&R I), and on or before April 25, 2023, to comply with the proposed EtO requirements (for HON) and the proposed chloroprene requirements (for P&R I affected sources producing neoprene). For all new affected sources that commence construction or reconstruction after April 25, 2023, we are proposing owners or operators comply with the EtO requirements (for HON) and the chloroprene requirements (for P&R I affected sources producing neoprene) within 60 days after the publication date of the final rule (or upon startup, whichever is later).

a. Rationale for Proposed Compliance Dates of Proposed CAA Section 112(d)(2) and (3) Amendments

We are proposing new operating and monitoring requirements for the HON and P&R I under CAA section 112(d)(2) and (3). We anticipate that these requirements would require the installation of new flare monitoring equipment, and we project most CMPUs and EPPUs would install new control systems to monitor and adjust assist gas (air or steam) addition rates. Similar to the addition of new control equipment, these new monitoring requirements for flares would require engineering evaluations, solicitation and review of vendor quotes, contracting and installation of the equipment, and operator training. Installation of new monitoring and control equipment on flares will require the flare to be taken out of service. Depending on the configuration of the flares and flare header system, taking the flare out of service may also require a significant portion of the CMPU or EPPU to be shutdown. Therefore, for all existing affected sources, and all new affected sources under the current HON and P&R I that commenced construction or reconstruction after December 31, 1992 (for HON) or after June 12, 1995 (for P&R I), and on or before April 25, 2023, we are proposing that it is necessary to provide 3 years after the publication date of the final rule (or upon startup, whichever is later) for owners or operators to comply with the new operating and monitoring requirements for flares. For all new affected sources that commence construction or reconstruction after April 25, 2023, we are proposing owners or operators comply with the new operating and monitoring requirements for flares within 60 days after the publication date of the final rule (or upon startup, whichever is later).

Under CAA section 112(d)(2) and (3), we are proposing new vent control requirements for bypasses for the HON and P&R I. These requirements would typically require the addition of piping and potentially new control requirements. As these vent controls would most likely be routed to the flare, we are proposing, for all existing affected sources, and all new affected sources under the current HON and P&R I that commenced construction or reconstruction after December 31, 1992 (for HON) or after June 12, 1995 (for P&R I), and on or before April 25, 2023, to provide 3 years after the publication date of the final rule (or upon startup, whichever is later) for owners or operators to allow coordination of these bypass modifications with the installation of the new monitoring equipment for the flares. For all new affected sources that commence construction or reconstruction after April 25, 2023, we are proposing owners or operators comply with the new vent control requirements for bypasses within 60 days after the publication date of the final rule (or upon startup, whichever is later).

For atmospheric PRD in HAP service, we are establishing a work practice standard in the HON and P&R I that requires a process hazard analysis and implementation of a minimum of three redundant measures to prevent atmospheric releases. Alternately, owners or operators may elect to install closed-vent systems to route these PRDs to a flare, drain (for liquid thermal relief valves), or other control system. We anticipate that sources will need to identify the most appropriate preventive measures or control approach; design, install, and test the system; install necessary process instrumentation and safety systems; and may need to time installations with equipment shutdown or maintenance outages. Therefore, for all existing affected sources, and all new affected sources under the current HON and P&R I that commenced construction or reconstruction after December 31, 1992 (for HON) or after June 12, 1995 (for P&R I), and on or before April 25, 2023, we are proposing a compliance date of 3 years from the publication date of the final rule (or upon startup, whichever is later) for owners or operators to comply with the work practice standards for atmospheric PRD releases. For all new affected sources that commence construction or reconstruction after April 25, 2023, we are proposing owners or operators comply with the work practice standards for atmospheric PRD releases within 60 days after the publication date of the final rule (or upon startup, whichever is later).

We are also establishing work practice standards in the HON and P&R I for maintenance activities. We anticipate sources will need time to review and update their standard operating procedures for maintenance activities; identify the most appropriate preventive measures or control approaches; design, install, and test the control systems; and install necessary process instrumentation and safety systems if so required. Therefore, for all existing affected sources, and all new affected sources under the current HON and P&R I that commenced construction or reconstruction after December 31, 1992

(for HON) or after June 12, 1995 (for P&R I), and on or before April 25, 2023, we are proposing a compliance date of 3 years from the publication date of the final rule (or upon startup, whichever is later) for owners or operators to comply with the work practice standards for maintenance activities. For all new affected sources that commence construction or reconstruction after April 25, 2023, we are proposing owners or operators comply with the work practice standards for maintenance activities within 60 days after the publication date of the final rule (or upon startup, whichever is later).

Under CAA section 112(d)(2) and (3), we are also proposing new dioxins and furans emission limits for the HON, P&R I, and P&R II. The proposed provisions may require additional time to plan, purchase, and install equipment for dioxins and furans control. Therefore, for all existing affected sources, and all new affected sources under the current HON, P&R I, and P&R II that commenced construction or reconstruction after December 31, 1992 (for HON), or after May 16, 1994 (for P&R II), or after June 12, 1995 (for P&R I), and on or before April 25, 2023, we are proposing a compliance date of 3 years from the publication date of the final rule (or upon startup, whichever is later) for owners or operators to comply with the dioxins and furans emission limits. For all new affected sources that commence construction or reconstruction after April 25, 2023, we are proposing owners or operators comply with the dioxins and furans emission limits within 60 days after the publication date of the final rule (or upon startup, whichever is later).

Other amendments we are proposing under CAA section 112(d)(2) and (3) include LDAR requirements for HON and P&R I pressure vessels, process vent control requirements for certain HON and P&R I surge control vessels and bottoms receivers, control requirements for certain HON transfer racks with an operating pressure greater than 204.9 kPa, and a LDAR program for P&R II heat exchange systems for BLR and WSR sources and equipment leaks for WSR sources in P&R II. Any of these proposed provisions may require additional time to plan, purchase, and install equipment for emissions control; and even if not, the EPA recognizes the confusion that multiple different compliance dates for individual requirements would create and the additional burden such an assortment of dates would impose. Therefore, for all existing affected sources, and all new affected sources under the current rules that commenced construction or reconstruction after December 31, 1992 (for HON), or after May 16, 1994 (for P&R II), or after June 12, 1995 (for P&R I), and on or before April 25, 2023, we are proposing a compliance date of 3 years from the publication date of the final rule (or upon startup, whichever is later) for owners or operators to comply with these other proposed amendments. For all new affected sources that commence construction or reconstruction after April 25, 2023, we are proposing owners or operators comply with these other proposed amendments within 60 days after the publication date of the final rule (or upon startup, whichever is later).

b. Rationale for Proposed Compliance Dates of Proposed CAA Section 112(d)(6) Amendments

As a result of our technology review for HON and P&R I heat exchange systems, we are proposing to replace the existing HON and P&R I leak definition and monitoring method with a new leak definition and monitoring method. We project some owners and operators would require engineering evaluations, solicitation and review of vendor quotes, contracting and installation of monitoring equipment, and operator training. In addition, facilities will need time to read and understand the amended rule requirements and update standard operating procedures. Therefore, we are proposing that all existing affected sources, and all new affected sources under the current rules that commenced construction or reconstruction after December 31, 1992 (for HON) or after June 12, 1995 (for P&R I), and on or before April 25, 2023, must comply with the new monitoring requirements for heat exchange systems no later than 3 years from the publication date of the final rule (or upon startup, whichever is later). For all new affected sources that commence construction or reconstruction after April 25, 2023, we are proposing owners or operators comply with the new monitoring requirements for heat exchange systems within 60 days after the publication date of the final rule (or upon startup, whichever is later).

Under our technology review for HON and P&R I storage vessels under CAA section 112(d)(6), we are revising HON and P&R I to reflect more stringent storage vessel capacity and MTVP thresholds. We project that some owners and operators will need to install new control equipment on certain storage vessels because of the proposed applicability revisions. The addition of new control equipment would require engineering design, solicitation, and review of vendor quotes, and contracting and installation of the equipment, which would need to be timed with process unit outage and operator training. Therefore, we are proposing that all existing affected sources, and all new affected sources under the current rules that commenced construction or reconstruction after December 31, 1992 (for HON) or after June 12, 1995 (for P&R I), and on or before April 25, 2023, must comply with the new storage vessel requirements no later than 3 years from the publication date of the final rule (or upon startup, whichever is later). For all new affected sources that commence construction or reconstruction after April 25, 2023, we are proposing owners or operators comply with the new storage vessel requirements within 60 days after the publication date of the final rule (or upon startup, whichever is later).

We are also proposing, pursuant to CAA section 112(d)(6), to remove the 50 ppmv and 0.005 scmm Group 1 process vent thresholds from the HON Group 1 process vent definition and P&R I Group 1 continuous front-end process vent definition, and instead require owners and operators of HON or P&R I process vents that emit greater than or equal to 1.0 lb/hr of total organic HAP to reduce emissions of organic HAP using a flare meeting the proposed operating and monitoring requirements for flares; or reduce emissions of total organic HAP or TOC by 98 percent by weight or to an exit concentration of 20 ppmv, whichever is less stringent. Additionally, as a result of our technology review for P&R I batch front-end process vents, we are proposing owners and operators of batch front-end process vents that release a total of annual organic HAP emissions greater than or equal to 4,536 kg/yr (10,000 lb/yr) from all batch front-end process vents combined would be required to reduce emissions of organic HAP from these process vents using a flare meeting the proposed operating and monitoring requirements for flares; or reduce emissions of organic HAP or TOC by 90 percent by weight (or to an exit concentration of 20 ppmv if considered an ''aggregate batch vent stream'' as defined by the rule). We project that some owners and operators will need to install new control equipment and/or new hard-piping or duct work for certain process vents because of the proposed applicability revisions. The addition of new control equipment would require engineering design, solicitation, and review of vendor quotes, and contracting and installation of the equipment, which would need to be timed with process unit outage and

operator training. Therefore, we are proposing that all existing affected sources, and all new affected sources under the current rules that commenced construction or reconstruction after December 31, 1992 (for HON) or after June 12, 1995 (for P&R I), and on or before April 25, 2023, must comply with the new process vent requirements no later than 3 years from the publication date of the final rule (or upon startup, whichever is later). For all new affected sources that commence construction or reconstruction after April 25, 2023, we are proposing owners or operators comply with the new process vent requirements within 60 days after the publication date of the final rule (or upon startup, whichever is later).

Compliance dates for the fenceline monitoring provisions proposed under CAA section 112 (d)(6) consider the amount of time that it will take owners and operators to develop their siting plans and secure the capabilities to conduct the monitoring and analyze the results. For fenceline monitoring, the compliance timeline also must consider the timeline for controls to be installed and operational before root cause analysis and application of corrective measures can take place. However, the actual monitoring can and must begin at least a year before to develop the annual average concentration baseline. Therefore, we are proposing that owners and operators of all existing sources and all new affected sources under the current rules that commenced construction or reconstruction after December 31, 1992 (for HON) or after June 12, 1995 (for P&R I), and on or before April 25, 2023 must begin fenceline monitoring one year after the publication date of the final rule and must perform root cause analysis and apply corrective action requirements upon exceedance of an annual average concentration action level starting 3 years after the publication date of the final rule (*i.e.,* such that by after two years after the publication date of this rule, facilities will have installed controls to reduce EtO and chloroprene (as discussed in section III.F.1.c of this preamble) and be able to compare 1 year of data to the annual average concentration action level by year 3). For all new affected sources that commence construction or reconstruction after April 25, 2023, we are proposing owners or operators begin fenceline monitoring within 60 days after the publication date of the final rule (or upon startup, whichever is later). We are also proposing to require quarterly reporting of fenceline results beginning 1 year after monitoring begins.

c. Rationale for Proposed Compliance Dates of Proposed CAA Section 112(f) Amendments

As previously mentioned in this preamble, we are proposing under CAA section 112(f), new provisions considering results of the risk assessments to address emissions of EtO from equipment leaks, flares, heat exchange systems, maintenance vents, process vents, storage vessels, and wastewater at HON processes; and emissions of chloroprene from continuous front-end process vents, batch front-end process vents, maintenance vents, storage vessels, and wastewater associated with neoprene production processes subject to P&R I. The proposed provisions will require additional time to plan, purchase, and install equipment for EtO or chloroprene control. For example, for HON process vents in EtO service, if the affected source cannot demonstrate 99.9 percent control of EtO emissions, or reduce EtO emissions to less than 1 ppmv (from each process vent) or 5 pounds per year (for all combined process vents), then a new control system will need to be installed. Therefore, we are proposing a compliance date of 2 years after the publication date of the final rule, or upon startup, whichever is later for all existing affected sources, and all new affected sources under the current rules that commenced construction or reconstruction after December 31, 1992 (for HON) or after June 12, 1995 (for P&R I), and on or before April 25, 2023 to comply with the proposed EtO and chloroprene requirements. For all new affected sources that commence construction or reconstruction after April 25, 2023, we are proposing owners or operators comply with the EtO and chloroprene requirements within 60 days after the publication date of the final rule (or upon startup, whichever is later).

d. Rationale for Proposed Compliance Dates of Other Proposed Amendments

We are proposing to change the HON, P&R I, and P&R II requirements for SSM by removing the exemption from the requirements to meet the standard during SSM periods, proposing alternative standards where needed, and by removing the requirement to develop and implement an SSM plan. In addition, we are proposing to remove all of the regulatory affirmative defense provisions from P&R I. We are also proposing electronic reporting requirements for the HON, P&R I, and P&R II. For details on these proposed amendments, see section III.E of this preamble. Except for the removal of the affirmative defense provisions in P&R I, we are positing that facilities would need some time to successfully accomplish these revisions, including time to read and understand the amended rule requirements, to evaluate their operations to ensure that they can meet the standards during periods of startup and shutdown, as defined in the rule, and make any necessary adjustments, including making adjustments to standard operating procedures, and to convert reporting mechanisms to install necessary hardware and software. As previously mentioned, the EPA recognizes the confusion that multiple different compliance dates for individual requirements would create and the additional burden such an assortment of dates would impose. From our assessment of the timeframe needed for compliance with the entirety of the proposed revisions to SSM requirements as well as the new proposed electronic reporting requirements for flare management plans, compliance reports, and performance evaluation reports, the EPA considers a period of 3 years after the publication date of the final rule to be the most expeditious compliance period practicable and, thus, is proposing that all affected sources be in compliance with these revised requirements upon initial startup or within 3 years of the publication date of the final rule, whichever is later. However, we are proposing to provide 60 days after the publication date of the final rule (or upon startup, whichever is later) for owners or operators of all affected sources to comply with the requirement to report electronically. We are also proposing to provide 60 days after the publication date of the final rule (or upon startup, whichever is later) for owners or operators of P&R I affected sources to comply with the removal of the affirmative defense provisions.

2. NSPS Subparts VVb, IIIa, NNNa, RRRa

We are proposing that all sources of equipment leaks in the SOCMI (regulated under 40 CFR part 60, subpart VVb) and all SOCMI air oxidation unit processes, distillation operations, and reactor processes (regulated under 40 CFR part 60, subparts IIIa, NNNa, and RRRa, respectively), that commenced construction, reconstruction, or modification on or after April 25, 2023, would need to meet the requirements of the new NSPS upon startup of the new, reconstructed or modified facility or 60

days after publication of the final rule, whichever is later. This proposed compliance schedule is consistent with the requirements in section 111 of the CAA and the Congressional Review Act.

IV. Summary of Cost, Environmental, and Economic Impacts

A. What are the affected sources?

There are approximately 207 facilities subject to the HON, 19 P&R I facilities (and 10 of these P&R I facilities are collocated with HON processes), and 5 P&R II facilities (and 3 of these P&R II facilities are collocated with HON processes). We also estimate that two additional HON facilities will be newly constructed over the next three years. The OECA's ECHO tool (*https://echo.epa.gov*) indicates there are currently 592 SOCMI facilities subject to subpart VV or VVa; and 284 SOCMI facilities subject to at least one of the process vent NSPS subparts III, NNN, and/or RRR. The list of facilities is available in the document titled *Lists of Facilities Subject to the HON, Group I and Group II Polymers and Resins NESHAPs, and NSPS subparts VV, VVa, III, NNN, and RRR,* which is available in the docket for this rulemaking. We estimated that there would be one new greenfield facility, six new affected facilities constructed at existing plant sites, and 12 modified/reconstructed facilities subject to NSPS subpart IIIa, NNNa, and/or RRRa in the next 5 years. We estimated there would be one new greenfield facility, 34 new affected facilities constructed at existing plant sites, and one modified facility subject to NSPS subpart VVb in the next 5 years (and no affected facilities would trigger NSPS subpart VVa reconstruction requirements).

B. What are the air quality impacts?

This proposed action would reduce HAP and VOC emissions from HON, P&R I, and P&R II emission sources as well as the NSPS SOCMI air oxidation unit processes, distillation operations, reactor processes, and equipment leaks sources. Considering reported emissions inventories for EtO and chloroprene, we estimate that the proposed amendments to the NESHAP would reduce overall HAP emissions from the SOCMI source category by approximately 1,009 tpy, reduce overall HAP emissions from the P&R I source categories by approximately 185 tpy, and reduce overall HAP emissions from the P&R II source categories by approximately 1 tpy. We note that these emissions reductions do not consider the potential excess emissions reductions from flares that could result from the proposed monitoring requirements; we estimate flare excess emissions reductions of 4,858 tpy HAP and 19,889 tpy VOC. Based on our analysis of the proposed actions described in sections III.C.3.b and III.C.6.b of this preamble for the NSPS, we estimate that the proposed amendments to the NSPS would reduce VOC emissions from the SOCMI source category by approximately 1,609 tpy. Emission reductions and secondary impacts (*e.g.,* emission increases associated with supplemental fuel or additional electricity) by rule are listed below.

1. HON

For the HON, the EPA estimates HAP and VOC emission reductions of approximately 1,009 and 1,817 tpy, respectively. The EPA estimates these reductions include an approximate 58 tpy reduction in EtO emissions (from reported emissions inventories). The EPA also estimates that the proposed action would result in additional emissions of 714 tpy of carbon monoxide (CO), 609,761 tpy of carbon dioxide (CO_2), 277 tpy of nitrogen oxides (NO_X) (including 5.3 tpy of nitrous oxide (N_2O)), 12.7 tpy of particulate matter, 1.0 tpy of sulfur dioxide (SO_2), and a reduction of 20,177 tpy of methane emissions. More information about the estimated emission reductions and secondary impacts of this proposed action for the HON can be found in the RIA accompanying this proposal and in the documents referenced in sections III.B through III.D of this preamble.

2. P&R I

For P&R I, the EPA estimates HAP and VOC emission reductions of approximately 185 and 199 tpy, respectively. The EPA estimates these reductions include an approximate 14 tpy reduction in chloroprene emissions (from reported emissions inventories). The EPA also estimates that the proposed action would result in additional emissions of 110 tpy of CO, 115,975 tpy of CO_2, 75 tpy of NO_X (including 1.5 tpy of N_2O), 4.8 tpy of particulate matter, 0.4 tpy of SO_2, and a reduction of 2,018 tpy of methane emissions. More information about the estimated emission reductions and secondary impacts of this proposed action for P&R I can be found in the RIA accompanying this proposal and in the documents referenced in sections III.B through III.D of this preamble.

3. P&R II

For P&R II, the EPA estimates 1 tpy of HAP and VOC emission reductions. The EPA also estimates that the proposed action would not have any secondary pollutant impacts. More information about the estimated emission reductions and secondary impacts of this proposed action for P&R II can be found in the RIA accompanying this proposal and in the documents referenced in sections III.B through III.D of this preamble.

4. NSPS Subpart VVb

For the proposed NSPS subpart VVb, the EPA estimates VOC emission reductions of approximately 340 tpy. The EPA estimates that the proposed action would not have any secondary pollutant impacts. More information about the estimated emission reductions and secondary impacts of this proposed action for NSPS subpart VVb can be found in the RIA accompanying this proposal and in the document titled *CAA 111(b)(1)(B) review for the SOCMI Equipment Leaks NSPS Subpart VVa,* which is available in the docket for this rulemaking.

5. NSPS Subparts IIIa, NNNa, and RRRa

For the proposed NSPS subparts IIIa, NNNa, and RRRa, the EPA estimates VOC emission reductions of approximately 1,269 tpy. The EPA estimates that the proposed action result in additional emissions of 21.5 tpy of CO, 15,370 tpy of CO_2, and 4.0 tpy of NO_X (including 0.1 tpy of N_2O), and a reduction of 757 tpy of methane emissions. More information about the estimated emission reductions and secondary impacts of this proposed action for NSPS subparts IIIa, NNNa, and RRRa can be found in the RIA accompanying this proposal and in the document titled *CAA 111(b)(1)(B) review for the SOCMI air oxidation unit processes, distillation operations, and reactor processes NSPS subparts III, NNN, and RRR,* which is available in the docket for this rulemaking.

C. What are the cost impacts?

This proposed action would cumulatively cost (in 2021 dollars) approximately $501 million in total capital costs and $190 million per year in total annualized costs (including product recovery), based on our analysis of the proposed action described in sections III.B through III.D of this preamble. Costs by rule are listed below.

1. HON

For the HON, the EPA estimates this proposed action would cost approximately $441 million in total capital costs and $166 million per year in total annualized costs (including product recovery). More information about the estimated cost of this

proposed action for the HON can be found in the documents referenced in sections III.B through III.D of this preamble.

2. P&R I

For P&R I, the EPA estimates this proposed action would cost approximately $25 million in total capital costs and $15 million per year in total annualized costs (including product recovery). More information about the estimated cost of this proposed action for P&R I can be found in the documents referenced in sections III.B through III.D of this preamble.

3. P&R II

For P&R II, the EPA estimates this proposed action would cost approximately $2.9 million in total capital costs and $1.7 million per year in total annualized costs (including product recovery). More information about the estimated cost of this proposed action for P&R II can be found in the documents referenced in sections III.B through III.D of this preamble.

4. NSPS Subpart VVb

For the proposed NSPS subpart VVb, the EPA estimates this proposed action would cost approximately $7.7 million in total capital costs and $1.1 million per year in total annualized costs (including product recovery). More information about the estimated cost of this proposed action for NSPS subpart VVb can be found in the document titled *CAA 111(b)(1)(B) review for the SOCMI Equipment Leaks NSPS Subpart VVa,* which is available in the docket for this rulemaking.

5. NSPS Subparts IIIa, NNNa, and RRRa

For the proposed NSPS subparts IIIa, NNNa, and RRRa, the EPA estimates this proposed action would cost approximately $24 million in total capital costs and $5.8 million per year in total annualized costs (including product recovery). More information about the estimated cost of this proposed action for NSPS subparts IIIa, NNNa, and RRRa can be found in the document titled *CAA 111(b)(1)(B) review for the SOCMI air oxidation unit processes, distillation operations, and reactor processes NSPS subparts III, NNN, and RRR,* which is available in the docket for this rulemaking.

D. What are the economic impacts?

The EPA conducted economic impact analyses for this proposal, in a document titled *Regulatory Impact Analysis,* which is available in the docket for this action. The economic impact analyses contain two parts. The economic impacts of the proposal on small entities are calculated as the percentage of total annualized costs incurred by affected ultimate parent owners to their revenues. This ratio provides a measure of the direct economic impact to ultimate parent owners of HON, P&R I, and P&R II facilities and NSPS VVb, IIIa, NNNa, and RRRa facilities while presuming no impact on consumers. We estimate the average small entity impacted by the proposal will incur total annualized costs of 0.46 percent of their revenue, with none exceeding 1.5 percent, not considering product recovery from compliance. With product recovery, the EPA estimates that the average small entity impacted by the proposal will incur total annualized costs of 0.43 percent of their revenue, with none exceeding 1.3 percent. We estimate that 20 percent (2 in total) of impacted small entities will incur total annualized costs greater than 1 percent of their revenue, and none will incur total annualized costs greater than 3 percent of their revenue. These estimates are unchanged when including product recovery. This is based on a conservative estimate of costs imposed on ultimate parent companies, where total annualized costs are imposed on a facility are at the upper bound of what is possible under the rule and do not include product recovery as a credit.

In addition, we provide an economic impact analysis using costs of the HON and Polymers and Resins I and II NESHAP that estimates changes in affected chemical product price and output related to the impact of the compliance costs on producers and consumers of such chemical products for each of these proposed rules. There are seven chemical products included in the economic impact analysis—butadiene, styrene, acetone, acrylonitrile, ethylene dichloride, ethylene glycol, and ethylene oxide. For the HON, chemical product prices are estimated to increase from less than 0.01 percent to 0.61 percent, and output by product is estimated to decrease by less than 0.01 percent to 0.54 percent. For the two Polymers and Resins NESHAP, chemical product prices are estimated to increase by less than 0.01 percent to 0.05 percent, and output by product is estimated to decrease by less than 0.01 percent to 0.09 percent. More explanation of these economic impacts can be found in the Regulatory Flexibility Act (RFA) section later in this preamble and in the RIA for this proposed rulemaking.

E. What are the benefits?

The emissions controls required by these rules are expected to reduce emissions of a number of HAP. The health effects associated with the main HAP of concern from SOCMI (found within the HON), P&R I, and P&R II source categories are discussed fully in Chapter 4 of the RIA: ethylene oxide (Section 4.1.1), chloroprene (Section 4.1.2), benzene (Section 4.1.3), 1,3-butadiene (Section 4.1.4), vinyl chloride (Section 4.1.5), ethylene dichloride (Section 4.1.6), chlorine (Section 4.1.7), maleic anhydride (Section 4.1.8) and acrolein (Section 4.1.9). This proposal is projected to reduce ethylene oxide emissions from HON processes by approximately 58 tons per year (tpy) and reduce chloroprene emissions from Neoprene Production processes in P&R I by approximately 14 tpy. We also estimate that the proposed amendments to the NESHAP would reduce other HAP emissions (excluding ethylene oxide and chloroprene) from the SOCMI, P&R I, and P&R II source categories by approximately 1,123 tpy. We also estimate that the proposed amendments to the NESHAP will reduce excess emissions of HAP from flares in the SOCMI and P&R I source categories by an additional 4,858 tpy. The Agency was unable to estimate HAP emission reductions for the proposed amendments to the NSPS in this rulemaking.

Quantifying and monetizing the economic value of reducing the risk of cancer and non-cancer effects is made difficult by the lack of a central estimate of estimate of cancer and non-cancer risk and estimates of the value of an avoided case of cancer (fatal and non-fatal) and morbidity effects. Due to methodology and data limitations, we did not attempt to monetize the health benefits of reductions in HAP in this analysis. Instead, we are providing a qualitative discussion in the RIA of the health effects associated with HAP emitted from sources subject to control under the proposed action.

The emission controls installed to comply with these proposed rules are also expected to reduce VOC emissions which, in conjunction with NO_X and in the presence of sunlight, form ground-level ozone (O_3). This section reports the estimated ozone-related benefits of reducing VOC emissions in terms of the number and value of avoided ozone-attributable deaths and illnesses.

As a first step in quantifying O_3-related human health impacts, the EPA consults the *Integrated Science*

Assessment for Ozone (Ozone ISA)[166] as summarized in the Technical Support Document for the Final Revised Cross State Air Pollution Rule Update.[167] This document synthesizes the toxicological, clinical, and epidemiological evidence to determine whether each pollutant is causally related to an array of adverse human health outcomes associated with either acute (*i.e.,* hours or days-long) or chronic (*i.e.,* years-long) exposure. For each outcome, the Ozone ISA reports this relationship to be causal, likely to be causal, suggestive of a causal relationship, inadequate to infer a causal relationship, or not likely to be a causal relationship.

In brief, the Ozone ISA found short-term (less than one month) exposures to ozone to be causally related to respiratory effects, a ''likely to be causal'' relationship with metabolic effects and a ''suggestive of, but not sufficient to infer, a causal relationship'' for central nervous system effects, cardiovascular effects, and total mortality. The Ozone ISA reported that long-term exposures (one month or longer) to ozone are ''likely to be causal'' for respiratory effects including respiratory mortality, and a ''suggestive of, but not sufficient to infer, a causal relationship'' for cardiovascular effects, reproductive effects, central nervous system effects, metabolic effects, and total mortality.

For all estimates, we summarized the monetized ozone-related health benefits using discount rates of 3 percent and 7 percent for the 15-year analysis period of these rules discounted back to 2023 rounded to 2 significant figures. For the full set of underlying calculations see the benefits workbook in the RIA, which is available in the docket for this rulemaking. In addition, we include the monetized disbenefits (*i.e.,* negative effects) from additional CO_2 and NO_X emissions, which occur with the HON, P&R I and NSPS IIIa, NNNa, and RRRa, but not P&R II or NSPS VVb since there are no additional CO_2 emissions as a result of these two proposed rules.

1. HON

The present value (PV) of the net monetized benefits (monetized health benefits plus monetized climate benefits minus climate disbenefits) for the proposed amendments for the HON are $103.4 million at the 3 percent discount rate to $78.4 million at the 7 percent discount rate and $715.4 million at the 3 percent discount rate to $495.4 million at the 7 percent discount rate. The equivalent annual value (EAV) of the benefits for the proposed amendments for the HON are $8.6 million at the 3 percent discount rate to $7.9 million at the 7 percent discount rate and $60.1 million at the 3 percent discount rate to $53.1 million at the 7 percent discount rate.

2. P&R I

The PV of the net monetized benefits (monetized health benefits plus monetized climate benefits minus monetized climate disbenefits) for the proposed amendments for P&R I are minus $37.8 million at the 3 percent discount rate to minus $38.6 million at the 7 percent discount rate and minus $17.5 million at the 3 percent discount rate to minus $24.5 million at the 7 percent discount rate. The EAV of the benefits for the proposed amendments for P&R I are minus $0.8 million at the 3 percent discount rate to minus $1.6 million at the 7 percent discount rate and minus $1.5 million at the 3 percent discount rate to minus $1.7 million at the 7 percent discount rate.

3. P&R II

The PV of the net monetized benefits (monetized health benefits plus monetized climate benefits minus monetized climate disbenefits) for the proposed amendments for P&R II are zero since there are minimal VOC emission reductions (no more than 1 tpy), and there are no changes in climate-related emissions (CO_2, methane, N_2O).

4. NSPS Subpart VVb

Because the estimated emissions reductions due to this proposed rule are relatively small and because we cannot be confident of the location of new facilities that would be subject to the proposed NSPS subpart VVb, the EPA elected to use the benefit per-ton (BPT) approach. BPT estimates provide the total monetized human health benefits (the sum of premature mortality and premature morbidity) of reducing one ton of the VOC precursor for ozone from a specified source. Specifically, in this analysis, we multiplied the estimates from the SOCMI sector by the corresponding emission reductions. Also, there are no climate benefits or disbenefits associated with this proposed NSPS. Thus, all monetized benefits are human health benefits from VOC reductions.

The PV of the net monetized benefits (monetized health benefits only) for the proposed NSPS subpart VVb are $1.2 million at the 3 percent discount rate to $0.9 million at the 7 percent discount rate and $11 million at the 3 percent discount rate to $7.5 million at the 7 percent discount rate. The EAV of the benefits for the proposed NSPS subpart VVb are $0.10 million at the 3 percent discount rate to $0.09 million at the 7 percent discount rate and $0.93 million at the 3 percent discount rate to $0.82 million at the 7 percent discount rate.

5. NSPS Subpart IIIa, NNNa, and RRRa

Because the estimated emissions reductions due to this rule are relatively small and because we cannot be confident of the location of new facilities that would be subject to the proposed NSPS subparts IIIa, NNNa, and RRRa, the EPA elected to use the BPT approach. BPT estimates provide the total monetized human health benefits (the sum of premature mortality and premature morbidity) of reducing one ton of the VOC precursor for ozone from a specified source. Specifically, in this analysis, we multiplied the estimates from the SOCMI sector by the corresponding emission reductions. We then add these monetized human health benefits to the monetized climate benefits and disbenefits to provide a total estimate of monetized benefits for these proposed NSPS.

The PV of the net monetized benefits (monetized health benefits plus monetized climate benefits minus monetized climate disbenefits) for the proposed NSPS subparts IIIa, NNNa, and RRRa are $11.4 million at the 3 percent discount rate to $10.0 million at the 7 percent discount rate and $47.8 million at the 3 percent discount rate to $34.8 million at the 7 percent discount rate. The EAV of the benefits for the proposed NSPS subparts IIIa, NNNa, and RRRa are $1.0 million at the 3 percent discount rate to $0.9 million at the 7 percent discount rate and $4.1 million at the 3 percent discount rate to $3.6 million at the 7 percent discount rate.

F. What analysis of environmental justice did we conduct?

Executive Order 12898 directs EPA to identify the populations of concern who are most likely to experience unequal burdens from environmental harms, which are specifically minority populations (people of color), low-

[166] U.S. EPA (2020). Integrated Science Assessment for Ozone and Related Photochemical Oxidants. U.S. Environmental Protection Agency. Washington, DC. Office of Research and Development. EPA/600/R–20/012. Available at: *https://www.epa.gov/isa/integrated-science-assessment-isa-ozone-and-related-photochemical-oxidants.*

[167] U.S. EPA. 2021. Technical Support Document (TSD) for the Final Revised Cross-State Air Pollution Rule Update for the 2008 Ozone Season NAAQS Estimating $PM_{2.5}$- and Ozone-Attributable Health Benefits. *https://www.epa.gov/sites/default/files/2021-03/documents/estimating_pm2.5-_and_ozone-attributable_health_benefits_tsd.pdf.*

income populations, and Indigenous peoples (59 FR 7629, February 16, 1994). Additionally, Executive Order 13985 is intended to advance racial equity and support underserved communities through Federal government actions (86 FR 7009, January 20, 2021). For this action, pursuant to these Executive Orders, the EPA conducted an assessment of the impacts that would result from the proposed rule amendments, if promulgated, on communities with environmental justice (EJ) concerns. However, this assessment did not inform the technical and scientific determinations made to support the proposed rule amendments in this action. The EPA defines EJ as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' [168] The EPA further defines fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.'' In recognizing that people of color and low-income populations often bear an unequal burden of environmental harms and risks, the EPA continues to consider ways of protecting them from adverse public health and environmental effects of air pollution. For purposes of analyzing regulatory impacts, the EPA relies upon its June 2016 ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis,'' [169] which provides recommendations that encourage analysts to conduct the highest quality analysis feasible, recognizing that data limitations, time, resource constraints, and analytical challenges will vary by media and circumstance. The Technical Guidance states that a regulatory action may involve potential EJ concerns if it could: (1) Create new disproportionate impacts on minority populations, low-income populations, and/or Indigenous peoples; (2) exacerbate existing disproportionate impacts on minority populations, low-income populations, and/or Indigenous peoples; or (3) present opportunities to address existing disproportionate impacts on minority populations, low-income populations, and/or Indigenous peoples through this action under development.

1. SOCMI Source Category Demographics

For the SOCMI source category, the EPA examined the potential for the 195 HON facilities (for which the EPA had HAP emissions inventories) to pose concerns to communities living in proximity to facilities, both in the baseline and under the control option considered in this proposal. Specifically, the EPA analyzed how demographics and risk are distributed both pre- and post-control, enabling us to address the core questions that are posed in the EPA's 2016 Technical Guidance for Assessing Environmental Justice in Regulatory Analysis. In conducting this analysis, we considered key variables highlighted in the guidance including ''minority populations (people of color and Hispanic or Latino), low-income populations, and/or indigenous peoples.'' The methodology and detailed results of the demographic analysis are presented in the document titled *Analysis of Demographic Factors for Populations Living Near Hazardous Organic NESHAP (HON) Facilities,* which is available in the docket for this action.

To examine the potential for EJ concerns, the EPA conducted a baseline proximity analysis, baseline risk-based analysis (*i.e.,* before implementation of any controls proposed by this action), and post-control risk-based analysis (*i.e.,* after implementation of the controls proposed by this action). The baseline proximity demographic analysis is an assessment of individual demographic groups in the total population living within 10 km (~6.2 miles) and 50 km (~31 miles) of the facilities. The baseline risk-based demographic analysis is an assessment of risks to individual demographic groups in the population living within 10 km and 50 km of the facilities prior to the implementation of any controls proposed by this action (''baseline''). The post-control risk-based demographic analysis is an assessment of risks to individual demographic groups in the population living within 10 km and 50 km of the facilities after implementation of the controls proposed by this action (''post-control''). In this preamble, we focus on the 10 km radius for the demographic analysis because it encompasses all the facility MIR locations, captures 97 percent of the population with baseline cancer risks greater than or equal to 50-in-1 million from SOCMI source category emissions, and captures 100 percent of the population with such baseline risks greater than 100-in-1 million. The results of the proximity analysis for populations living within 50 km are included in the document titled *Analysis of Demographic Factors for Populations Living Near Hazardous Organic NESHAP (HON) Facilities,* which is available in the docket for this action.

Under the risk-based demographic analysis, the total population, population percentages, and population count for each demographic group for the entire U.S. population is shown in the column titled ''Nationwide Average for Reference'' in Tables 31 through 33 of this preamble of this document. These national data are provided as a frame of reference to compare the results of the baseline proximity analysis, the baseline risk-based analyses, and the post-control risk-based analyses.

The results of the proximity demographic analysis indicate that a total of 9.3 million people live within 10 km of the 195 HON facilities. The percent of the population that is African American is more than double the national average and the percent of the population that is Hispanic or Latino (22 percent) is also higher than the national average (19 percent). The percent of people living below the poverty level and the percent of people over the age of 25 without a high school diploma are higher than the national averages. The results of the baseline proximity analysis indicate that the proportion of other demographic groups living within 10 km of HON facilities is similar to or below the national average. The baseline risk-based demographic analysis, which focuses on populations that have higher cancer risks, suggests that Hispanic/Latinos and African Americans are overrepresented at all cancer risk levels greater than 1-in-1 million. In addition, linguistic isolation increases as the Hispanic/Latino population increases. At all risk levels, in most cases, populations living around facilities where the percentage of the population below the poverty level is 1.5 to 2 times the national average also are above the national average for African American, Native American, Hispanic/Latino, or Other/Multiracial. The post-control risk-based demographic analysis shows that the controls under consideration in this proposal would reduce the number of people who are exposed to cancer risks resulting from SOCMI source category emissions greater than or equal to 1-in-1 million, greater than or equal to 50-in-1 million, and greater than 100-in-1 million significantly, which will

[168] *https://www.epa.gov/environmentaljustice.*

[169] See *https://www.epa.gov/environmental justice/technical-guidance-assessing-environmental-justice-regulatory-analysis.*

improve human health of current and future populations that live near these facilities. After the control has been implemented, there will be no people who are exposed to cancer risks greater than 100-in-1 million resulting from SOCMI source category emissions. For more details see the remainder of this section.

a. Baseline Proximity Analysis

The column titled ''Baseline Proximity Analysis for Pop. Living within 10 km of HON Facilities'' in Tables 31 through 33 of this preamble shows the share and count of people for each of the demographic categories for the total population living within 10 km (~6.2 miles) of HON facilities. These are the results of the baseline proximity analysis. These baseline proximity results are repeated in Tables 31 through 33 of this preamble for easy comparison to the risk-based analyses discussed later.

Approximately 9.3 million people live within 10 km of the 195 HON facilities assessed. The results of the proximity demographic analysis indicate that the percent of the population that is African American (25 percent, 2.35M people) is more than double the national average (12 percent). The percent of the population that is Hispanic or Latino (22 percent, 2M people) is higher than the national average (19 percent). The percent of people living below the poverty level (19 percent, 1.75M people) and percent of people over the age of 25 without a high school diploma (16 percent, 1.5M people) are higher than the national averages (13 percent and 12 percent, respectively). The baseline proximity analysis indicates that the proportion of other demographic groups living within 10 km of HON facilities is similar to or below the national average.

b. Baseline Risk-Based Demographics

The baseline risk-based demographic analysis results are shown in the ''baseline'' column of Tables 31 through 33 of this preamble. This analysis focused on the populations living within 10 km (~6.2 miles) of the HON facilities with estimated cancer risks greater than or equal to 1-in-1 million resulting from SOCMI source category emissions (Table 31 of this preamble), greater than or equal to 50-in-1 million (Table 32 of this preamble), and greater than 100-in-1 million (Table 33 of this preamble). The risk analysis indicated that emissions from the source category, prior to the controls we are proposing, expose 2.8 million people living near 111 facilities to a cancer risk greater than or equal to 1-in-1 million, 342,000 people living near 21 facilities to a cancer risk greater than or equal to 50-in-1 million, and 87,000 people living near 8 facilities to a cancer risk greater than 100-in-1 million.

In the baseline, there are 2.8 million people living around 111 HON facilities with a cancer risk greater than or equal to 1-in-1 million resulting from SOCMI source category emissions. The 111 HON facilities are located across 17 states, but two-thirds of them are located in Texas and Louisiana (50 in Texas and 33 in Louisiana). Ninety percent of the people with risks greater than or equal to 1-in-1 million are living around 29 of the 111 HON facilities. All but three of these 29 facilities are located in Texas and Louisiana. The percent of the baseline population with estimated cancer risks greater than or equal to 1-in-1 million who are African American (25 percent, 692,000 people) is well above the average percentage of the national population that is African American (12 percent). The African American population living within 10 km of two facilities in Louisiana account for about a quarter of the total African American population with risks greater than or equal to 1-in-1 million resulting from SOCMI source category emissions.

The percent of the population with cancer risks greater than or equal to 1-in-1 million resulting from SOCMI source category emissions prior to the proposed controls that is Hispanic or Latino (34 percent, 958,000 people) is significantly higher than that in the baseline proximity analysis (22 percent, 2 million people) and well above the national average (19 percent). The population around an Illinois facility is over 75 percent Hispanic or Latino, and accounts for a quarter of the Hispanic/Latino population with risks greater than or equal to 1-in-1 million resulting from SOCMI source category emissions. Another group of 5 facilities in the Houston/Channelview Texas area have local populations that are between 60 and 90 percent Hispanic/Latino, and those communities account for 31 percent of the Hispanic/Latino population with risks greater than or equal to 1-in-1 million resulting from SOCMI source category emissions. The percent of the population that is linguistically isolated in the baseline with cancer risks greater than or equal to 1-in-1 million (8 percent, 228,000 people) is higher than the percentage in the baseline proximity analysis (5 percent, 510,000 people). The areas with the highest Hispanic/Latino population are some of those with the highest percent linguistic isolation.

Overall, the percent of the baseline population that is Native American with risks greater than or equal to 1-in-1 million resulting from SOCMI source category emissions (0.2 percent) is well below the national average (0.7 percent). The population with baseline risks resulting from SOCMI source category emissions greater than or equal to 1-in-1 million have a percent Native American population that is more than 2 times the national average. These facilities are located in Texas (3), Louisiana, Montana, Illinois, and Kansas.

The percent of the population below the poverty level with cancer risks greater than or equal to 1-in-1 million resulting from SOCMI source category emissions (18 percent, 513K people) is above the national average (13 percent). The percent of the population living below the poverty level within 10 km of 19 facilities is twice the national average. The percent of the population over 25 years old without a high school diploma with cancer risks greater than or equal to 1-in-1 million resulting from SOCMI source category emissions (20 percent, 561,000 people) is greater than the national average (13 percent) as well as greater than the overall percent of the population living near HON facilities who are over 25 years old without a high school diploma (16 percent, 1.5 million people).

In the baseline, there are 342,000 people living around 21 HON facilities with a cancer risk greater than or equal to 50-in-1 million resulting from SOCMI source category emissions. The 21 HON facilities are located across 6 states, but two-thirds of them are located in Texas and Louisiana. Ninety-six percent of the people with risks greater than or equal to 50-in-1 million resulting from SOCMI source category emissions live around 5 HON facilities, which are located in Texas or Louisiana. The percent of the population that is African American with baseline cancer risk greater than or equal to 50-in-1 million resulting from SOCMI source category emissions (19 percent, 65,000 people) is above the national average (12 percent) but is significantly lower than the percent of the population that is African American with risks greater than or equal to 1-in-1 million resulting from SOCMI source category emissions (25 percent, 692,000 people). The percentage of African Americans is greater than the national average near over half of the facilities (12 facilities) where cancer risk is greater than 50-in-1 million resulting from HON source category emissions. The populations near two facilities in Texas account for about 70 percent of the number of African Americans with risks greater than or equal to 50-in-1

million resulting from SOCMI source category emissions.

The percentage of the population that is Hispanic/Latino with risks greater than or equal to 50-in-1 million resulting from SOCMI source category emissions (24 percent, 83,000 people) is similar to the percentage of the population that is Hispanic/Latino in the total population living within 10 km of the facilities (22 percent). The percent of population that is Hispanic/Latino with cancer risks greater than or equal to 50-in-1 million resulting from SOCMI source category emissions is above the national average at over half of the facilities (13 facilities). The population near three facilities in Texas account for about 80 percent of the number of Latino/Hispanic people with risks greater than or equal to 50-in-1 million resulting from SOCMI source category emissions.

Overall, the percent of the population that is Native American with risks greater than or equal to 50-in-1 million resulting from SOCMI source category emissions (0.2 percent) is below the national average (0.7 percent). Populations near four facilities with baseline risks greater than or equal to 50-in-1 million resulting from SOCMI source category emissions that have a percent Native American population that is more than 2 times the national average. These facilities are located in Texas (3) and Louisiana.

The percentage of the population with cancer risks resulting from SOCMI source category emissions greater than or equal to 50-in-1 million that are below the poverty level (14 percent), over 25 years old without a high school diploma (15 percent), or are linguistically isolated (5 percent) are similar or slightly above the respective national averages. Of the population with risks greater than or equal to 50-in-1 million resulting from SOCMI source category emissions, the percentage of the population below the poverty level is twice the national average near five facilities. For all 5 of these facilities, the percentage of the population is also 2 times the national average percentage for at least one race/ethnic demographic category.

In the baseline, there are 88,000 people living around 8 HON facilities with a cancer risk resulting from SOCMI source category emissions greater than 100-in-1 million. These 8 HON facilities are located in Texas and Louisiana. The percent of the population that is African American with baseline cancer risk greater than 100-in-1 million resulting from SOCMI source category emissions (15 percent) is just above the national average (12 percent). The percentage of the African American population with cancer risks greater than 100-in-1 million resulting from SOCMI source category emissions is between 2 to 4 times greater than the national average at three facilities in Texas and one in Louisiana.

The percentage of the population that is Hispanic/Latino with risks greater than 100-in-1 million resulting from SOCMI source category emissions (25 percent, 22,000 people) is above the national average (19 percent) and is similar to the share of the population with cancer risks resulting from SOCMI source category emissions greater than or equal to 50-in-1 million (24 percent, 83,000 people). The share of the Hispanic and Latino population with cancer risks greater than 100-in-1 million resulting from SOCMI source category emissions is between 2 to 3 times greater than the national average at five facilities in Texas and one in Louisiana.

Overall, the percent of the baseline population that is Native American with risks greater than or equal to 100-in-1 million resulting from SOCMI source category emissions (0.2 percent) is well below the National Average (0.7 percent).

The percentage of the population with cancer risks greater than 100-in-1 million resulting from SOCMI source category emissions that are below the poverty level (14 percent), over 25 without a high school diploma (14 percent), or linguistically isolated (5 percent) are similar or slightly above the respective national averages. The percent of the population below the poverty level is 1.5 times the national average at five facilities. The population living around three of these facilities is also 1.5 times the national average for at least one race/ethnic demographic.

In summary, the baseline risk-based demographic analysis, which focuses on populations that are expected to have higher cancer risks resulting from SOCMI source category emissions, suggests that Hispanics or Latinos are disproportionally overrepresented at all cancer risk levels. Specifically, the percent of the population that is Hispanic/Latino is almost twice the national average at a cancer risk equal to or greater than 1-in-1 million and almost 1.5 times the national average at the 50 in a million and 100 in a million risk levels. Similarly, the African American population is disproportionately overrepresented at all cancer risk levels in the baseline risk analysis. The percentage of African American individuals with risks greater than or equal to 1-in-1 million resulting from SOCMI source category emissions is twice the national average and 1.25 times the national average for the percentage with risks greater than 100-in-1 million. In most cases, when the percentage of the population below the poverty level is greater than 1.5 times the national average the percentage of the populations that is African American, Native American, Hispanic/Latino, or Other/Multiracial residents is above the national average.

c. Post-Control Risk-Based Demographics

This analysis focused on the populations living within 10 km (~6.2 miles) of the facilities with estimated cancer risks greater than or equal to 1-in-1 million (Table 31 of this preamble), greater than or equal to 50-in-1 million (Table 32 of this preamble), and greater than 100-in-1 million (Table 33 of this preamble) resulting from SOCMI source category emissions after implementation of the control options for HON sources investigated under the residual risk analysis as described in section III.B.2.a of this preamble (''post-control''). The results of the post-control risk-based demographics are in the columns titled ''Post-Control'' of Tables 31 through 33 of this preamble. In this analysis, we evaluated how all of the proposed controls and emission reductions for HON processes described in this action affect the distribution of risks. This enables us to characterize the post-control risks and to evaluate whether the proposed action creates or mitigates potential EJ concerns as compared to the baseline.

The risk analysis indicated that the number of people within 10 km of a facility exposed to risks greater than or equal to 1-in-1 million resulting from SOCMI source category emissions (Table 31 of this preamble) is reduced from 2.8 million people in the baseline to approximately 2.5 million people after implementation of the proposed HON controls. The populations with a cancer risk greater than or equal to 1-in-1 million resulting from SOCMI source category emissions are located around 111 facilities for both the baseline and post-control.

The post-control population living within 10 km of a facility with estimated cancer risks greater than or equal to 1-in-1 million resulting from SOCMI source category emissions (Table 31 of this preamble) has similar demographic percentages to the baseline population with risks greater than or equal to 1-in-1 million. However, the number of individuals with risks greater than or equal to 1-in-1 million resulting from SOCMI source category emissions is reduced in each demographic.

Specifically, percentage of the population with risks greater than or equal to 1-in-1 million resulting from SOCMI source category emissions that is African American remains high at 23 percent in the post-control scenario, but the number of African Americans with risks at or above 1-in-1 million is reduced by over 100,000 people from 692,000 in the baseline to 583,000 in the post-control scenario.

Similarly, the percentage of the population with risks greater than or equal to 1-in-1 million resulting from SOCMI source category emissions that is Hispanic/Latino is almost twice the national average in the post-control scenario (37 percent versus 19 percent), but the number of Hispanic/Latino individuals with risks at or above 1-in-1 million is reduced by about 40,000 people from 958,000 in the baseline to 917,000 in the post-control scenario.

The percent of the population that is Native American with risks greater than or equal to 1-in-1 million resulting from SOCMI source category emissions (0.2 percent) is below the national average (0.7 percent) in the post-control analysis. Nevertheless, there are seven facilities post-control with risks greater than or equal to 1-in-1 million with a percent Native American population that is more than 2 times the national average. However, the number of Native Americans with risks greater than or equal to 1-in-1 million resulting from SOCMI source category emissions is reduced from 6,000 in the baseline to 5,000 in the post-control scenario.

The percent of the population below the poverty level is the same in the post-control scenario as in the baseline (18 percent), but the number of individuals with risks greater than or equal to 1-in-1 million resulting from SOCMI source category emissions that are below the poverty level is reduced by 56,000, from 513,000 to 457,000. The percent of individuals over 25 years old without a high school diploma is the same in the post-control scenario as in the baseline (20 percent), but the number of individuals with risks greater than or equal to 1-in-1 million resulting from SOCMI source category emissions is reduced by almost 50,000, from 561,000 to 513,000. The percentage of the population that is in linguistic isolation with risks greater than or equal to 1-in-1 million resulting from SOCMI source category emissions is higher in the post-control scenario (9 percent), but the number of individuals is reduced by 14,000 compared to the baseline, from 228,000 to 214,000.

The risk analysis indicated that the number of people living within 10 km of a facility and exposed to risks greater than or equal to 50-in-1 million resulting from SOCMI source category emissions (Table 32 of this preamble) is reduced significantly from 342,000 people in the baseline to 29,000 after implementation of the proposed controls. This represents more than a 90 percent reduction in the number of individuals with risk greater than or equal to 50-in-1 million when compared to the baseline. The populations living within 10 km of a facility and with a cancer risk greater than or equal to 50-in-1 million resulting from SOCMI source category emissions are located around 13 facilities in the post-control scenario, 8 fewer facilities than in the baseline. These 13 facilities are located in Alabama, Arkansas, Illinois, Kentucky, Louisiana (5 facilities), and Texas (4 facilities). The communities within 10 km of five of those facilities (in Texas (3 facilities), Alabama, and Illinois) comprise 95 percent of the population with risks greater than or equal to 50-in-1 million resulting from SOCMI source category emissions.

The number of individuals with risks greater than or equal to 50-in-1 million is reduced significantly for each demographic category in the post-control scenario. Specifically, the percentage of the population with risks greater than or equal to 50-in-1 million resulting from SOCMI source category emissions that is African American decreased in the post-control scenario and is equal to the national average (12 percent). The number of African Americans with risks at or above 50-in-1 million is reduced from 65,000 in the baseline to 4,000 post-control. The percentage of the population with risks greater than or equal to 50-in-1 million resulting from SOCMI source category emissions that is Hispanic/Latino increased from 24 percent in the baseline to 29 percent post-control, but the number of Hispanic/Latino individuals with risks at or above 50-in-1 million is reduced from 83,000 in the baseline to 9,000 post-control.

Overall, the percent of the population that is Native American with risks greater than or equal to 50-in-1 million resulting from SOCMI source category emissions (0.3 percent) is well below the national average (0.7 percent) in the post-control scenario. In addition, the number of Native Americans with risks greater than or equal to 50-in-1 million resulting from SOCMI source category emissions is reduced from 700 in the baseline to less than 100 post-control.

The percent of the population with risks greater than or equal to 50-in-1 million resulting from SOCMI source category emissions whose income is below the poverty level (11 percent) is reduced from the baseline (14 percent) post-control. In addition, the number of individuals with risks greater than or equal to 50-in-1 million resulting from SOCMI source category emissions who are below the poverty level is reduced from 49,000 to 3,000. The number of individuals with risks greater than or equal to 50-in-1 million resulting from SOCMI source category emissions that are over 25 years old without a high school diploma or are linguistically isolated are greatly reduced post-control.

The risk analysis indicated that the number of people living within 10 km of a facility with risks greater than 100-in-1 million resulting from SOCMI source category emissions (Table 33 of this preamble) is reduced from over 87,000 individuals in the baseline to zero individuals after application of the proposed SOCMI controls. Therefore, for the post-control risk-based demographic results, there are no greater than 100-in-1 million demographic results to discuss.

In summary, as shown in the post-control risk-based demographic analysis, the controls under consideration in this proposal would significantly reduce the number of people expected to have cancer risks greater than or equal to 1-in-1 million, greater than or equal to 50-in-1 million, and greater than 100-in-1 million resulting from SOCMI source category emissions. Although the number of individuals with risks greater than or equal to 1-in-1 million is reduced in the post-control scenario (reduced from 2.8 million people to 2.5 million people), populations of African Americans, Hispanics/Latinos, those living below the poverty level, and those over 25 without a high school diploma remain disproportionately represented. Similarly, the number of individuals with risks greater than or equal to 50-in-1 million is reduced significantly in the post-control scenario (reduced from 342,000 to 29,000), but the population of African Americans remains disproportionately represented. Post-control there are no individuals with risks greater than 100-in-1 million resulting from SOCMI source category emissions (reduced from 87,000 people to 0 people).

TABLE 31—SOURCE CATEGORY: COMPARISON OF BASELINE AND POST-CONTROL DEMOGRAPHICS OF POPULATIONS WITH CANCER RISK GREATER THAN OR EQUAL TO 1-IN-1 MILLION RESULTING FROM SOCMI SOURCE CATEGORY EMISSIONS LIVING WITHIN 10 km OF FACILITIES TO THE NATIONAL AVERAGE AND PROXIMITY DEMOGRAPHICS

Demographic group	Nationwide average for reference	Baseline proximity analysis for pop. living within 10 km of HON facilities	Cancer risk ≥1-in-1 million within 10 km of HON facilities	
			Baseline	Post-control
Total Population	328M	9,271,798	2,798,319	2,512,518.
Number of Facilities		195	111	111.
Race and Ethnicity by Percent [number of people]				
White	60 [197M]	47 [4.4M]	37 [1.04M]	37 [919K].
African American	12 [40M]	25 [2.35M]	25 [692K]	23 [583K].
Native American	0.7 [2M]	0.2 [20K]	0.2 [6K]	0.2 [5K].
Hispanic or Latino (includes white and nonwhite)	19 [62M]	22 [2M]	34 [958K]	37 [917K].
Other and Multiracial	8 [27M]	5 [493K]	4 [101K]	4 [89K].
Income by Percent [Number of People]				
Below Poverty Level	13 [44M]	19 [1.75M]	18 [513K]	18 [457K].
Above Poverty Level	87 [284M]	81 [7.5M]	82 [2.3M]	82 [2.1M].
Education by Percent [Number of People]				
Over 25 and without a High School Diploma	12 [40M]	16 [1.5M]	20 [561K]	20 [513K].
Over 25 and with a High School Diploma	88 [288M]	84 [7.8M]	80 [2.2M]	80 [2M].
Linguistically Isolated by Percent [Number of People]				
Linguistically Isolated	5 [18M]	5 [510K]	8 [228K]	9 [214K].

Notes:
- There are 207 HON facilities; however, only 195 of these facilities are included in the proximity analysis based on available data, which corresponds to 222 EIS facility IDs.
- Nationwide population and demographic percentages are based on Census' 2015–2019 American Community Survey (ACS) 5-year block group averages. Total population count within 10 km is based on 2010 Decennial Census block population.
- To avoid double counting, the ''Hispanic or Latino'' category is treated as a distinct demographic category. A person who identifies as Hispanic or Latino is counted as Hispanic or Latino, regardless of race.
- The number of facilities represents facilities with a cancer MIR above level indicated. When the MIR was located at a user assigned receptor at an individual residence and not at a census block centroid, we were unable to estimate population and demographics for that facility.
- The sum of individual populations with a demographic category may not add up to total due to rounding.

TABLE 32—SOURCE CATEGORY: COMPARISON OF BASELINE AND POST-CONTROL DEMOGRAPHICS OF POPULATIONS WITH CANCER RISK GREATER THAN OR EQUAL TO 50-IN-1 MILLION RESULTING FROM SOCMI SOURCE CATEGORY EMISSIONS LIVING WITHIN 10 km OF FACILITIES TO THE NATIONAL AVERAGE AND PROXIMITY DEMOGRAPHICS

Demographic group	Nationwide average for reference	Baseline proximity analysis for pop. living within 10 km of HON facilities	Cancer risk ≥1-in-1 million within 10 km of HON facilities	
			Baseline	Post-control
Total Population	328M	9,271,798	341,638	29,355.
Number of Facilities		195	21	13.
Race and Ethnicity by Percent [number of people]				
White	60 [197M]	47 [4.4M]	52 [177K]	54 [16K].
African American	12 [40M]	25 [2.35M]	19 [65K]	12 [4K].
Native American	0.7 [2M]	0.2 [20K]	0.2 [660]	0.3 [81].
Hispanic or Latino (includes white and nonwhite)	19 [62M]	22 [2M]	24 [83K]	29 [9K] .
Other and Multiracial	8 [27M]	5 [493K]	5 [17K]	4 [1.2K].
Income by Percent [Number of People]				
Below Poverty Level	13 [44M]	19 [1.75M]	14 [49K]	11 [3.3K].
Above Poverty Level	87 [284M]	81 [7.5M]	86 [293K]	89 [26K].
Education by Percent [Number of People]				
Over 25 and without a High School Diploma	12 [40M]	16 [1.5M]	15 [50K]	12 [4K].
Over 25 and with a High School Diploma	88 [288M]	84 [7.8M]	85 [291K]	88 [26K].
Linguistically Isolated by Percent [Number of People]				
Linguistically Isolated	5 [18M]	5 [510K]	5 [15K]	3 [766].

Notes:
- There are 207 HON facilities; however, only 195 of these facilities are included in the proximity analysis based on available data, which corresponds to 222 EIS facility IDs.
- Nationwide population and demographic percentages are based on Census' 2015–2019 ACS 5-year block group averages. Total population count within 10 km is based on 2010 Decennial Census block population.
- To avoid double counting, the ''Hispanic or Latino'' category is treated as a distinct demographic category. A person who identifies as Hispanic or Latino is counted as Hispanic or Latino, regardless of race.
- The number of facilities represents facilities with a cancer MIR above level indicated. When the MIR was located at a user assigned receptor at an individual residence and not at a census block centroid, we were unable to estimate population and demographics for that facility.

• The sum of individual populations with a demographic category may not add up to total due to rounding.

TABLE 33—SOURCE CATEGORY: COMPARISON OF BASELINE AND POST-CONTROL DEMOGRAPHICS OF POPULATIONS WITH CANCER RISK GREATER THAN 100-IN-1 MILLION RESULTING FROM SOCMI SOURCE CATEGORY EMISSIONS LIVING WITHIN 10 km OF FACILITIES TO THE NATIONAL AVERAGE AND PROXIMITY DEMOGRAPHICS

Demographic group	Nationwide average for reference	Baseline proximity analysis for pop. living within 10 km of HON facilities	Cancer risk ≥1-in-1 million within 10 km of HON facilities	
			Baseline	Post-control
Total Population	328M	9,271,798	87,464	0
Number of Facilities		195	8	0
Race and Ethnicity by Percent [number of people]				
White	60 [197M]	47 [4.4M]	54 [47K].	
African American	12 [40M]	25 [2.35M]	15 [13K].	
Native American	0.7 [2M]	0.2 [20K]	0.2 [202].	
Hispanic or Latino (includes white and nonwhite)	19 [62M]	22 [2M]	25 [22K].	
Other and Multiracial	8 [27M]	5 [493K]	6 [5.5K].	
Income by Percent [Number of People]				
Below Poverty Level	13 [44M]	19 [1.75M]	14 [12K].	
Above Poverty Level	87 [284M]	81 [7.5M]	86 [75K].	
Education by Percent [Number of People]				
Over 25 and without a High School Diploma	12 [40M]	16 [1.5M]	14 [12K].	
Over 25 and with a High School Diploma	88 [288M]	84 [7.8M]	86 [75K].	
Linguistically Isolated by Percent [Number of People]				
Linguistically Isolated	5 [18M]	5 [510K]	5 [4K].	

Notes:
• There are 207 HON facilities; however, only 195 of these facilities are included in the proximity analysis based on available data, which corresponds to 222 EIS facility IDs.
• Nationwide population and demographic percentages are based on Census' 2015–2019 ACS 5-year block group averages. Total population count within 10 km is based on 2010 Decennial Census block population.
• To avoid double counting, the "Hispanic or Latino" category is treated as a distinct demographic category. A person who identifies as Hispanic or Latino is counted as Hispanic or Latino, regardless of race.
• The number of facilities represents facilities with a cancer MIR above level indicated. When the MIR was located at a user assigned receptor at an individual residence and not at a census block centroid, we were unable to estimate population and demographics for that facility.
• The sum of individual populations with a demographic category may not add up to total due to rounding.

2. HON Whole-Facility Demographics

As described in section III.A.5 of this preamble, we assessed the facility-wide (or "whole-facility") risks for 195 HON facilities in order to compare the SOCMI source category risk to the whole facility risks, accounting for HAP emissions from the entire major source and not just those resulting from SOCMI source category emissions at the major source as discussed in the previous section. The whole facility risk assessment includes all sources of HAP emissions at each facility as reported in the NEI (described in section III.C of this preamble). Since HON facilities tend to include HAP emissions sources from many source categories, the EPA conducted a whole-facility demographic analysis focused on post-control risks. This whole-facility demographic analysis characterizes the remaining risks communities face after implementation of the controls proposed in this for both the SOCMI source category and the Neoprene Production source category.

The whole-facility demographic analysis is an assessment of individual demographic groups in the total population living within 10 km (~6.2 miles) and 50 km (~31 miles) of the facilities. In this preamble, we focus on the 10 km radius for the demographic analysis because, based on SOCMI category emissions, this distance includes all the facility MIR locations, includes 97 percent of the population with cancer risks greater than or equal to 50-in-1 million, and includes 100 percent of the population with risks greater than 100-in-1 million. The results of the whole-facility demographic analysis for populations living within 50 km are included in the document titled *Analysis of Demographic Factors for Populations Living Near Hazardous Organic NESHAP (HON) Facilities,* which is available in the docket for this action.

The whole-facility demographic analysis post-control results are shown in Table 34 of this preamble. This analysis focused on the populations living within 10 km of the HON facilities with estimated whole-facility post-control cancer risks greater than or equal to 1-in-1 million, greater than or equal to 50-in-1 million, and greater than 100-in-1 million. The risk analysis indicated that all emissions from the HON facilities, after the proposed reductions, expose a total of about 3 million people living around 140 facilities to a cancer risk greater than or equal to 1-in-1 million, 78,000 people living around 24 facilities to a cancer risk greater than or equal to 50-in-1 million, and 2,500 people living around 4 facilities to a cancer risk greater than 100-in-1 million.

When the HON whole-facility populations are compared to the SOCMI source category populations in the post-control scenarios, we see 500,000 additional people with risks greater than or equal to 1-in-1 million, 29,000 additional people with risks greater than or equal to 50-in-1 million, and 2,500 additional people with risks greater than 100-in-1 million. With the exception of a smaller percentage of affected Hispanic/Latino individuals (37 percent for category versus 33 percent whole-facility), the demographic distribution of the whole-facility population with risks greater than or equal to 1-in-million is similar to the category population with risks greater than or equal to 1-in-1 million in the post-

control scenario. The population with risks greater than or equal to 50-in-1 million in the whole-facility analysis has a lower percent of Hispanic/Latino individuals than the category population with risks greater than or equal to 50-in-1 million (25 percent versus 29 percent). The percentage of the population with risks greater than or equal to 50-in-1 million that is below the poverty level or over 25 years old without a high school diploma is higher for the whole-facility post-control population than for the category post-control population. The SOCMI category emissions analysis indicated that there are no people with post-control risks greater than 100-in-1 million. Based on results from the whole-facility emissions analysis, there are 2,500 people with post-control risks greater than 100-in-million. The increased cancer risk for most of these 2,500 people is driven by EtO emissions from non-HON processes and whole-facility emissions from the neoprene production facility (a combination of the remaining SOCMI category risk and neoprene production category risk at this facility). The percent of the population in the whole facility analysis with post-control risks greater than 100-in-1 million that is African American (29 percent, 700 individuals) is well above the national average (12 percent). In addition, the percent of the population in the whole facility analysis with a post control risk greater than 100-in-1 million that is below the poverty level (21 percent,500 individuals), and the percent of the population that is over 25 years old without a high school diploma (25 percent, 600 individuals) are above the national average (13 percent and 12 percent, respectively).

TABLE 34—WHOLE FACILITY: WHOLE-FACILITY POST-CONTROL DEMOGRAPHICS FOR HON FACILITIES BY RISK LEVEL FOR POPULATIONS LIVING WITHIN 10 km OF FACILITIES

Demographic group	Nationwide	Post-control cancer risk for populations within 10 km		
		≥1-in-1 million	≥50-in-1 million	>100-in-1 million
Total Population	328M	3,119,955	78,144	2,498.
Number of Facilities		140	24	4.
Race and Ethnicity by Percent [Number of People]				
White	60 [197M]	39 [1.2M]	57 [45K]	53 [1.3K].
African American	12 [40M]	24 [760K]	14 [11K]	29 [727].
Native American	0.7 [2M]	0.2 [6.5K]	0.2 [174]	0.0 [1].
Hispanic or Latino (includes white and nonwhite)	19 [62M]	33 [1M]	25 [20K]	17 [434].
Other and Multiracial	8 [27M]	4 [113K]	4 [3K]	1 [22] .
Income by Percent [Number of People]				
Below Poverty Level	13 [44M]	18 [576K]	14 [11K]	21 [531].
Above Poverty Level	87 [284M]	82 [2.5M]	86 [67K]	79 [2K] .
Education by Percent [Number of People]				
Over 25 and without a High School Diploma	12 [40M]	20 [614K]	16 [12.5K]	25 [619].
Over 25 and with a High School Diploma	88 [288M]	80 [2.5M]	84 [66K]	75 [2K].
Linguistically Isolated by Percent [Number of People]				
Linguistically Isolated	5 [18M]	8 [236K]	3 [3K]	2 [43].

Notes:
- Nationwide population and demographic percentages are based on Census' 2015–2019 ACS 5-year block group averages. Total population count within 10 km is based on 2010 Decennial Census block population.
- To avoid double counting, the ''Hispanic or Latino'' category is treated as a distinct demographic category. A person who identifies as Hispanic or Latino is counted as Hispanic or Latino, regardless of race.
- The number of facilities represents facilities with a cancer MIR above level indicated. When the MIR was located at a user assigned receptor at an individual residence and not at a census block centroid, we were unable to estimate population and demographics for that facility.
- The sum of individual populations with a demographic category may not add up to total due to rounding.

3. Neoprene Production Source Category Demographics

For the Neoprene Production source category, the EPA examined the potential for the one neoprene production facility to pose EJ concerns to communities both in the baseline and under the control option considered in this proposal. Specifically, the EPA analyzed how demographics and risk are distributed both pre- and post-control, enabling us to address the core questions that are posed in the EPA's 2016 Technical Guidance for Assessing Environmental Justice in Regulatory Analysis. In conducting this analysis, we considered key variables highlighted in the guidance including minority populations (people of color and Hispanic or Latino), low-income populations, and/or indigenous peoples. The methodology and detailed results of the demographic analysis are presented in a technical report, *Analysis of Demographic Factors for Populations Living Near Neoprene Production Facilities,* available in the docket for this action.

To examine the potential for EJ concerns in the pre-control baseline, the EPA conducted a baseline proximity analysis, baseline risk-based analysis, and post-control risk-based analysis. These analyses (total baseline, baseline risk, and post-control risks) assessed the demographic groups in the populations living within 5 km (~3.1 miles) and 50 km (~31 miles) of the facility. For the Neoprene Production source category, we focus on the 5 km radius for the demographic analysis because it encompasses the facility MIR location and captures 100 percent of the population with cancer risks resulting from Neoprene Production source category emissions greater than or equal to 50-in-1 million and greater than 100-in-1 million. The results of the proximity analysis for populations living within 50 km are included in the technical report included in the docket for this proposed rule. Nationwide average demographics data are provided as a frame of reference.

The results of the proximity demographic analysis indicate that a total of about 29,000 people live within 5 km of the Neoprene facility. The percent of the population that is African

American is more than four times the national average. The percent of people living below the poverty level is almost double the national average.

The baseline risk-based demographic analysis indicates that African Americans are disproportionally overrepresented at all cancer risk levels resulting from Neoprene Production source category emissions (Percent African Americans ranges from 5 to 7 times the national average percent). The percent of the population that is below the poverty level is twice the national average within 5 km of the Neoprene facility.

The post-control risk-based demographic analysis indicates that the controls under consideration for Neoprene Production source category in this proposal do not reduce the number of people with cancer risks resulting from Neoprene Production source category emissions greater than or equal to 1-in-1 million at the 5 km distance. However, the controls do significantly reduce the number of people with risks resulting from Neoprene Production source category emissions greater than or equal to 1-in-1 million within 50 km. The demographics of this population in the post-control risk-based analysis are similar to the baseline population. The populations with risks resulting from Neoprene Production source category emissions greater than or equal to 50-in-1 million and greater than 100-in-1 million are reduced at all distances by more than 90 percent by the controls for the Neoprene Production source category under consideration. In the post-control scenario, there are no people with risks resulting from Neoprene Production source category emissions greater than 100-in-1 million.

a. Baseline Proximity Analysis

The column titled ''Total Population Living within 5 km of Neoprene Facility'' in Tables 35 through 37 of this preamble shows the demographics for the total population living within 5 km (~3.1 miles) of the neoprene facility. A total of about 29,000 people live within 5 km of the one neoprene facility. The results of the proximity demographic analysis indicate that the percent of the population that is African American (56 percent, 16,000 people) is more than four times the national average (12 percent). The percent of people living below the poverty level (23 percent, 6,500 people) and those over the age of 25 without a high school diploma (16 percent, 4,500 people) are higher than the national averages (13 percent and 12 percent, respectively). The baseline proximity analysis indicates that the proportion of other demographic groups living within 5 km of the neoprene facility is similar to or below the national average.

b. Baseline Risk-Based Demographics

The baseline risk-based demographic analysis results are shown in the ''baseline'' column of Tables 35 through 37 of this preamble. This analysis focused on the populations living within 5 km (~3.1 miles) of the neoprene facility with estimated cancer risks resulting from Neoprene Production source category emissions greater than or equal to 1-in-1 million (Table 35 of this preamble), greater than or equal to 50-in-1 million (Table 36 of this preamble), and greater than 100-in-1 million Table 37 of this preamble) in the absence of the reductions we are proposing.

In the baseline, emissions from the Neoprene Production source category expose all individuals within 5 km of the facility (29,000 people) to a cancer risk greater than or equal to 1-in-1 million. Since the entire population within 5 km are exposed to risks greater than or equal to 1-in-1 million, the demographics of the baseline at-risk population are the same as the total baseline population. Specifically, a high percentage of the population is African American (56 percent versus 12 percent nationally), below the poverty line (23 percent versus 13 percent nationally), and over the age of 25 without a high school diploma (16 percent versus 12 percent nationally). The percentages of other demographic groups within the population with risks resulting from Neoprene Production source category emissions greater than or equal to 1-in-1 million living within 5 km of the neoprene facility are similar to or below the national average. Within 50 km (~31 miles) of the facility, about 70 percent of the population (687,000 people of the 1 million total within 50 km) is exposed to a cancer risk resulting from Neoprene Production source category emissions greater than or equal to 1-in-1 million. Additional details on the 50 km results can be found in the demographics report located in the docket.

The risk-based demographics analysis indicates that emissions from the source category, prior to the reductions we are proposing, expose about 13,000 individuals within 5 km of the facility to a cancer risk greater than or equal to 50-in-1 million (about half of the total population within 5 km). As seen at the lower risk level of greater than or equal to 1-in-1 million, the population with risks greater than or equal to 50-in-1 million has a very high percentage of African Americans; that percent is almost 6 times the national average (68 percent versus 12 percent nationally). The percent of the population that is below the poverty line is more than double the national average (27 percent versus 13 percent nationally), and the percent of the population that is over the age of 25 without a high school diploma is 1.5 times the national average (18 percent versus 12 percent nationally). The percentages of other demographic groups within the population with risks resulting from Neoprene Production source category emissions greater than or equal to 50-in-1 million living within 5 km of the Neoprene facility are similar to or below the national average.

In the baseline, there are 2,000 people living within 5 km of the Neoprene facility with a cancer risk resulting from Neoprene Production source category emissions greater than 100-in-1 million. The percent of the population that is African American with baseline cancer risk greater than 100-in-1 million (85 percent, 1,753 people) is over 7 times the national average (12 percent). The percentage of the population with cancer risks greater than 100-in-1 million that is below the poverty level (31 percent, 600 people) is about 2.5 times the national average (13 percent). The percent of the population that is over 25 without a high school diploma (14 percent, 300 people) is just above the national average (12 percent).

In summary, the baseline risk-based demographic analysis, which focuses on those specific locations that are expected to have higher cancer risks in the baseline, indicates that African Americans are disproportionally overrepresented at all cancer risk levels. Specifically, at all risk levels, the percent of the population that is African American is 5 to 7 times the national average and the percent of the population that is below the poverty level is twice the national average within 5 km of the neoprene production facility.

c. Post-Control Risk-Based Demographics

This analysis focused on the populations living within 5 km (~3.1 miles) of the facility with estimated cancer risks resulting from Neoprene Production source category emissions greater than or equal to 1-in-1 million (Table 35 of this preamble), greater than or equal to 50-in-1 million (Table 36 of this preamble), and greater than 100-in-1 million (Table 37 of this preamble) after implementation of the Neoprene Production source category control options as described in section III.B.2.b of this preamble. The results of the post-control risk-based demographics

analysis are in the columns titled ''Post-Control'' of Tables 35 through 37 of this preamble. In this analysis, we evaluated how all of the proposed controls and emission reductions for the Neoprene Production source category described in this action affect the distribution of risks. This enables us to characterize the post-control risks and to evaluate whether the proposed action creates or mitigates potential EJ concerns as compared to the baseline.

The risk analysis indicated that the number of people exposed to risks resulting from Neoprene Production source category emissions greater than or equal to 1-in-1 million within 5 km of the facility (Table 35 of this preamble) is unchanged from the baseline (29,000 people). Therefore, the population living within 5 km of the facility with estimated cancer risks greater than or equal to 1-in-1 million in the post-control scenario (Table 35 of this preamble) has the same demographic percentages as the total population in the proximity analysis and the population with risks greater than or equal to 1-in-1 million in the baseline risk analysis. Specifically, the percentage of the population with risks resulting from Neoprene Production source category emissions in the post-control analysis that is greater than or equal to 1-in-1 million and is African American (56 percent) is almost 5 times the national average (12 percent), and the percent below the poverty level (23 percent) is almost 2 times the national average (13 percent). However, after control, the number of people exposed to risk greater than or equal to 1-in-1 million within 50 km (~31 miles) of the facility is significantly reduced from 687,000 to 48,000.

The risk analysis indicated that the number of people living within 5 km of the facility and exposed to risks resulting from Neoprene Production source category emissions greater than or equal to 50-in-1 million (Table 36 of this preamble) is reduced significantly from about 13,000 people in the baseline to 700 people after implementation of the proposed controls. This represents more than a 90 percent reduction in the size of the populations at risk when compared to the baseline population. The post-control population living within 5 km of the facility with estimated cancer risks greater than or equal to 50-in-1 million for post-control (Table 36 of this preamble) is almost entirely African American (99 percent). The number of African Americans with risks greater than or equal to 50-in-1 million is reduced from about 9,000 in the baseline to 700 people post-control. Similarly, the post-control population with risks greater than or equal to 50-in-1 million has a high percent of people below poverty (33 percent). The number of people with risks greater than or equal 50-in-1 million that are below the poverty level is reduced from 3,400 in the baseline to 200 people post-control.

The risk analysis indicated that the number of people living within 5 km of the facility and exposed to risks resulting from Neoprene Production source category emissions greater than 100-in-1 million (Table 37 of this preamble) is reduced from over 2,000 people in the baseline to zero people after application of the proposed controls. Therefore, for the post-control risk-based demographics, no people with risks resulting from Neoprene Production source category emissions above 100-in-1 million.

In summary, as shown in the post-control risk-based demographic analysis, the controls under consideration in this proposal do not reduce the number of people expected to have cancer risks resulting from Neoprene Production source category emissions greater than or equal to 1-in-1 million at the 5 km distance. The controls do significantly reduce the number of people with risks resulting from Neoprene Production source category emissions greater than or equal to 1-in-1 million within 50 km. In the post-control population with risks greater than or equal to 1-in-1 million, African Americans and those living below the poverty level remain disproportionately represented. For the populations with risks greater than or equal to 50-in-1 million and greater than 100-in-1 million, the controls under consideration reduce the at-risk populations by more than 90 percent at all distances. In the post-control population with risks greater than or equal to 50-in-1 million, African Americans and those living below the poverty level remain disproportionately represented. Post-control, there are no people with risks resulting from Neoprene Production source category emissions greater than 100-in-1 million.

We also evaluated the whole-facility post-control risks at the neoprene production facility. The whole-facility post-control risks include all known sources of HAP emissions at the neoprene production facility, not just those from neoprene production processes. This whole-facility demographic analysis provides a more complete picture of the remaining risks at the facility after implementation of the controls proposed in this action and the populations exposed to emissions resulting from them. The post-control whole-facility emissions at the neoprene production facility are a combination of the remaining SOCMI category risk and Neoprene Production category risk at this facility. Based on whole-facility emissions, there are a total of about 47,000 people living within 10 km (~6.2 miles) with risks greater than or equal to 1-in-1 million after controls, which is unchanged from the baseline. There are 86,000 people within 50 km of the neoprene facility with post-control whole-facility risks greater than or equal to 1-in-1 million, which is a 90 percent reduction of the 893,000 people in the baseline. The population within 10 km with post-control whole-facility risks of greater than or equal to 1-in-1 million is 55 percent African American, and 19 percent are below the poverty level. Based on whole-facility emissions there are a total of about 2,000 people remaining after controls living within 10 km and 50 km of the neoprene facility with risks greater than or equal to 50-in-1 million (a reduction of 83 percent from the baseline of 16,000 people). This population is 83 percent African American and 32 percent below the poverty level. Based on whole-facility emissions, about 300 people with risks greater than 100-in-1 million remain after controls are implemented living within 10 km and 50 km of the neoprene production facility (a reduction of 86 percent from the baseline of 2,300 people). This population is 99 percent African American, and 33 percent are below the poverty level. We note that as further discussed in section III.C.7 of this preamble, the EPA is proposing a fenceline action level of 0.3 $\mu g/m^3$ for chloroprene for the whole facility. As such, we believe once fenceline monitoring is fully implemented, that whole facility post-control risks will be reduced to 100-in-1 million and that 0 people (rather than 300 people as shown in this analysis) will remain with risks greater than 100-in-1 million.

TABLE 35—SOURCE CATEGORY: COMPARISON OF BASELINE AND POST-CONTROL DEMOGRAPHICS OF POPULATIONS WITH CANCER RISK GREATER THAN OR EQUAL TO 1-IN-1 MILLION LIVING WITHIN 5 km OF THE NEOPRENE PRODUCTION FACILITY TO THE NATIONAL AVERAGE AND THE PROXIMITY DEMOGRAPHICS

Demographic group	Nationwide	Total population living within 5 km of neoprene facility	Cancer risk ≥1-in-1 million within 5 km of neoprene facility	
			Baseline	Post-control
Total population	328M	28,571	28,571	28,571.
Number of Facilities	.....	1	1	1.
Race and Ethnicity by Percent [Number of People]				
White	60 [197M]	35 [10K]	35 [10K]	35 [10K].
African American	12 [40M]	56 [16K]	56 [16K]	56 [16K].
Native American	0.7 [2M]	0.0	0.0	0.0.
Hispanic or Latino (includes white and nonwhite)	19 [62M]	5 [1.5K]	5 [1.5K]	5 [1.5K].
Other and Multiracial	8 [27M]	3 [900]	3 [900]	3 [900].
Income by Percent [Number of People]				
Below Poverty Level	13 [44M]	23 [6.5K]	23 [6.5K]	23 [6.5K].
Above Poverty Level	87 [284M]	77 [22K]	77 [22K]	77 [22K].
Education by Percent [Number of People]				
Over 25 and without a High School Diploma	12 [40M]	16 [4.6K]	16 [4.6K]	16 [4.6K].
Over 25 and with a High School Diploma	88 [288M]	84 [24K]	84 [24K]	84 [24K].
Linguistically Isolated by Percent [Number of People]				
Linguistically Isolated	5 [18M]	1 [300]	1 [300]	1 [300].

Notes:

- Nationwide population and demographic percentages are based on Census' 2015–2019 ACS 5-year block group averages. Total population count within 5 km is based on 2010 Decennial Census block population.
- To avoid double counting, the "Hispanic or Latino" category is treated as a distinct demographic category. A person who identifies as Hispanic or Latino is counted as Hispanic or Latino, regardless of race.
- The number of facilities represents facilities with a cancer MIR above level indicated. When the MIR was located at a user assigned receptor at an individual residence and not at a census block centroid, we were unable to estimate population and demographics for that facility.
- The sum of individual populations with a demographic category may not add up to total due to rounding.

TABLE 36—SOURCE CATEGORY: COMPARISON OF BASELINE AND POST-CONTROL DEMOGRAPHICS OF POPULATIONS WITH CANCER RISK GREATER THAN OR EQUAL TO 50-IN-1 MILLION LIVING WITHIN 5 km OF THE NEOPRENE FACILITY TO THE NATIONAL AVERAGE AND THE PROXIMITY DEMOGRAPHICS

Demographic group	Nationwide	Total population living within 5 km of the neoprene facility	Cancer risk ≥50-in-1 million within 5 km of the neoprene facility	
			Baseline	Post-control
Total Population	328M	28,571	12,801	727.
Number of Facilities	.....	1	1	1.
Race and Ethnicity by Percent [Number of People]				
White	60 [197M]	35 [10K]	26 [3.3K]	1 [<100].
African American	12 [40M]	56 [16K]	68 [8.6K]	99 [700].
Native American	0.7 [2M]	0.0	0.0	0.0 .
Hispanic or Latino (includes white and nonwhite)	19 [62M]	5 [1.5K]	4 [500]	0 .
Other and Multiracial	8 [27M]	3 [900]	2 [200]	0 .
Income by Percent [Number of People]				
Below Poverty Level	13 [44M]	23 [6.5K]	27 [3.4K]	33 [200].
Above Poverty Level	87 [284M]	77 [22K]	73 [9.3K]	67 [500].
Education by Percent [Number of People]				
Over 25 and without a High School Diploma	12 [40M]	16 [4.6K]	18 [2.3K]	12 [<100].
Over 25 and with a High School Diploma	88 [288M]	84 [24K]	82 [10.5K]	88 [600].

TABLE 36—SOURCE CATEGORY: COMPARISON OF BASELINE AND POST-CONTROL DEMOGRAPHICS OF POPULATIONS WITH CANCER RISK GREATER THAN OR EQUAL TO 50-IN-1 MILLION LIVING WITHIN 5 km OF THE NEOPRENE FACILITY TO THE NATIONAL AVERAGE AND THE PROXIMITY DEMOGRAPHICS—Continued

Demographic group	Nationwide	Total population living within 5 km of the neoprene facility	Cancer risk ≥50-in-1 million within 5 km of the neoprene facility	
			Baseline	Post-control
Linguistically Isolated by Percent [Number of People]				
Linguistically Isolated	5 [18M]	1 [300]	1 [<100]	0 .

Notes:
- Nationwide population and demographic percentages are based on Census' 2015–2019 ACS 5-year block group averages. Total population count within 5 km is based on 2010 Decennial Census block population.
- To avoid double counting, the "Hispanic or Latino" category is treated as a distinct demographic category. A person who identifies as Hispanic or Latino is counted as Hispanic or Latino, regardless of race.
- The number of facilities represents facilities with a cancer MIR above level indicated. When the MIR was located at a user assigned receptor at an individual residence and not at a census block centroid, we were unable to estimate population and demographics for that facility.
- The sum of individual populations with a demographic category may not add up to total due to rounding.

TABLE 37—SOURCE CATEGORY: COMPARISON OF BASELINE AND POST-CONTROL DEMOGRAPHICS OF POPULATIONS WITH CANCER RISK GREATER THAN 100-IN-1 MILLION LIVING WITHIN 5 km OF THE NEOPRENE FACILITY TO THE NATIONAL AVERAGE AND THE PROXIMITY DEMOGRAPHICS

Demographic group	Nationwide	Total population living within 5 km of the neoprene facility	Cancer risk >100-in-1 million within 5 km of the neoprene facility	
			Baseline	Post-control
Total population	328M	28,571	2,052	0
Number of Facilities	.....	1	1	0
Race and Ethnicity by Percent [Number of People]				
White	60 [197M]	35 [10K]	11 [200]	0
African American	12 [40M]	56 [16K]	85 [1.8K]	0
Native American	0.7 [2M]	0.0	0.0	0.0
Hispanic or Latino (includes white and nonwhite)	19 [62M]	5 [1.5K]	3 [<100]	0
Other and Multiracial	8 [27M]	3 [900]	0	0
Income by Percent [Number of People]				
Below Poverty Level	13 [44M]	23 [6.5K]	31 [600]	0
Above Poverty Level	87 [284M]	77 [22K]	69 [1.4K]	0
Education by Percent [Number of People]				
Over 25 and without a High School Diploma	12 [40M]	16 [4.6K]	14 [300]	0
Over 25 and with a High School Diploma	88 [288M]	84 [24K]	86 [1.8K]	0
Linguistically Isolated by Percent [Number of People]				
Linguistically Isolated	5 [18M]	1 [300]	0	0

Notes:
- Nationwide population and demographic percentages are based on Census' 2015–2019 ACS 5-year block group averages. Total population count within 5 km is based on 2010 Decennial Census block population.
- To avoid double counting, the "Hispanic or Latino" category is treated as a distinct demographic category. A person who identifies as Hispanic or Latino is counted as Hispanic or Latino, regardless of race.
- The number of facilities represents facilities with a cancer MIR above level indicated. When the MIR was located at a user assigned receptor at an individual residence and not at a census block centroid, we were unable to estimate population and demographics for that facility.
- The sum of individual populations with a demographic category may not add up to total due to rounding.

4. P&R I and P&R II Source Categories Demographics

As stated above, for P&R I and P&R II, other than the Neoprene Production source category within P&R I, we have not conducted a risk assessment for this proposal. Therefore, to examine the potential for any EJ concerns that might be associated with P&R I (excluding neoprene) or P&R II facilities, we performed a proximity demographic analysis, which is an assessment of individual demographic groups of the populations living within 5 km (~3.1 miles) and 50 km (~31 miles) of the facilities. The EPA then compared the data from this analysis to the national average for each of the demographic groups. In this preamble, we focus on the proximity results for the populations living within 10 km (~6.2 miles) of the

facilities. The results of the proximity analysis for populations living within 50 km are included in the document titled *Analysis of Demographic Factors for Populations Living Near Hazardous Organic NESHAP (HON) Facilities,* which is available in the docket for this action.

The results show that for populations within 5 km of the 18 P&R I facilities (5 in Louisiana, 6 in Texas, 2 in Kentucky, one each in Georgia, Minnesota, Mississippi, Ohio, Michigan), the following demographic groups were above the national average: African American (37 percent versus 12 percent nationally), Hispanic/Latino (24 percent versus 19 percent nationally), people living below the poverty level (24 percent versus 13 percent nationally), people over the age of 25 without a high school diploma (21 percent versus 12 percent nationally), and linguistically isolated households (7 percent versus 5 percent nationally).

The results show that for populations within 5 km of the 5 P&R II facilities (2 in Texas, one each in Alabama, Arkansas, Oregon), the following demographic groups were above the national average: Native American (0.9 percent versus 0.7 percent nationally), Hispanic/Latino (27 percent versus 19 percent nationally), and people over the age of 25 without a high school diploma (13 percent versus 12 percent nationally).

A summary of the proximity demographic assessment performed is included as Table 38 of this preamble. The methodology and the results of the demographic analysis are presented in the document titled *Analysis of Demographic Factors for Populations Living Near Polymers and Resins I and Polymer and Resins II Facilities,* which is available in the docket for this action.

TABLE 38—PROXIMITY DEMOGRAPHIC ASSESSMENT RESULTS FOR POLYMERS AND RESINS I AND II FACILITIES

Demographic group	Nationwide average for reference	P&R I: population within 5 km of 18 facilities	P&R II: population within 5 km of 5 facilities
Total Population	328M	627,823	124,050
Race and Ethnicity by Percent [Number of People]			
White	60 [197M]	35 [218K]	62 [76K].
African American	12 [40M]	37 [234K]	5 [7K].
Native American	0.7 [2M]	0.2 [1K]	0.9 [1K].
Hispanic or Latino (includes white and nonwhite)	19 [62M]	24 [150K]	27 [34K].
Other and Multiracial	8 [27M]	4 [24K]	5 [6K].
Income by Percent [Number of People]			
Below Poverty Level	13 [44M]	24 [150K]	13 [16K].
Above Poverty Level	87 [284M]	76 [478K]	87 [108K].
Education by Percent [Number of People]			
Over 25 and without a High School Diploma	12 [40M]	21 [130K]	13 [16K].
Over 25 and with a High School Diploma	88 [288M]	79 [498K]	87 [108K].
Linguistically Isolated by Percent [Number of People]			
Linguistically Isolated	5 [18M]	7 [43K]	2 [3K].

Notes:
- Nationwide population and demographic percentages are based on Census' 2015–2019 ACS 5-year block group averages. Total population count within 10 km is based on 2010 Decennial Census block population.
- To avoid double counting, the "Hispanic or Latino" category is treated as a distinct demographic category. A person who identifies as Hispanic or Latino is counted as Hispanic or Latino, regardless of race.
- The sum of individual populations with a demographic category may not add up to total due to rounding.

5. Proximity Demographics Analysis for NSPS Subpart VVb

Consistent with the EPA's commitment to integrating EJ in the Agency's actions, and following the directives set forth in multiple Executive Orders as well as CAA section 111(b)(1)(B), the Agency has carefully considered the impacts of the proposed NSPS subpart VVb on communities with EJ concerns. The proposed NSPS subpart VVb covers VOC emissions from certain equipment leaks in the SOCMI from sources that are constructed, reconstructed, or modified after April 25, 2023.

Executive Order 12898 directs the EPA to identify the populations of concern who are most likely to experience unequal burdens from environmental harms; specifically, minority populations, low-income populations, and indigenous peoples (59 FR 7629, February 16, 1994). Additionally, Executive Order 13985 is intended to advance racial equity and support underserved communities through Federal government actions (86 FR 7009, January 20, 2021). The EPA defines EJ as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." [170] The EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies." In recognizing that minority and low-income populations often bear an unequal burden of environmental harms and risks, the EPA continues to consider ways of protecting them from adverse public health and environmental effects of air pollution.

The locations of the new, modified, and reconstructed sources that will become subject to NSPS subpart VVb are not known. Therefore, to examine

[170] See footnote 168.

the potential for any EJ issues that might be associated with the proposed NSPS subpart VVb, we performed a proximity demographic analysis for 575 existing facilities that are currently subject to NSPS subparts VV or VVa. These represent facilities that might modify or reconstruct in the future and become subject to the NSPS subpart VVb requirements. This proximity demographic analysis characterized the individual demographic groups of the populations living within 5 km and within 50 km (~31 miles) of the existing facilities. The EPA then compared the data from this analysis to the national average for each of the demographic groups.

The proximity demographic analysis shows that, within 5 km of the facilities, the percent of the population that is African American is double the national average (24 percent versus 12 percent). The percent of people within 5 km living below the poverty level is significantly higher than the national average (20 percent versus 13 percent). The percent of people living within 5 km that are over 25 without a high school diploma is also higher than the national average (17 percent versus 12 percent). The proximity demographics analysis shows that within 50 km of the facilities, the percent of the population that is African American is above the national average (15 percent versus 12 percent). At 50 km, the remaining percentages for the demographics are similar to or below the national average.

TABLE 39—PROXIMITY DEMOGRAPHIC ASSESSMENT RESULTS FOR EXISTING FACILITIES SUBJECT TO NSPS SUBPARTS VV AND VVA

Demographic group	Nationwide	Population within 50 km of 575 facilities	Population within 5 km of 575 facilities
Total Population	328,016,242	140,946,443	8,084,246
Race and Ethnicity by Percent			
White	60	62	50
African American	12	15	24
Native American	0.7	0.4	0.4
Hispanic or Latino (includes white and nonwhite)	19	15	20
Other and Multiracial	8	8	5
Income by Percent			
Below Poverty Level	13	14	20
Above Poverty Level	87	86	80
Education by Percent			
Over 25 and without a High School Diploma	12	12	17
Over 25 and with a High School Diploma	88	88	83
Linguistically Isolated by Percent			
Linguistically Isolated	5	5	6

Notes:
• The nationwide population count and all demographic percentages are based on the Census' 2015–2019 American Community Survey five-year block group averages and include Puerto Rico. Demographic percentages based on different averages may differ. The total population counts are based on the 2010 Decennial Census block populations.
• To avoid double counting, the ''Hispanic or Latino'' category is treated as a distinct demographic category for these analyses. A person is identified as one of five racial/ethnic categories above: White, African American, Native American, Other and Multiracial, or Hispanic/Latino. A person who identifies as Hispanic or Latino is counted as Hispanic/Latino for this analysis, regardless of what race this person may have also identified as in the Census.

The proposed NSPS subpart VVb covers VOC emissions from certain equipment leaks in the SOCMI from sources that are constructed, reconstructed, or modified after April 25, 2023. NSPS subpart VVb will result in reduced VOC emissions by requiring the same requirements in NSPS subpart VVa plus requiring that all gas/vapor and light liquid valves be monitored quarterly at a leak definition of 100 ppm and all connectors be monitored once every 12 months at a leak definition of 500 ppm. For each of these requirements, we are proposing skip periods for good performance.

The methodology and the results (including facility-specific results) of the demographic analysis are presented in the document titled *Analysis of Demographic Factors for Populations Living Near Existing Facilities Subject to NSPS Subparts VV or VVa,* which is available in the docket for this action.

6. Proximity Demographics Analysis for NSPS Subparts IIIa, NNNa, and RRRa

Consistent with the EPA's commitment to integrating EJ in the Agency's actions, and following the directives set forth in multiple Executive Orders as well as CAA section 111(b)(1)(B), the Agency has carefully considered the impacts of the proposed NSPS subparts IIIa, NNNa, and RRRa on communities with EJ concerns. The proposed NSPS subparts IIIa, NNNa, and RRRa cover VOC emissions from certain process vents in the SOCMI from sources that are constructed, reconstructed, or modified after April 25, 2023.

Executive Order 12898 directs the EPA to identify the populations of concern who are most likely to experience unequal burdens from environmental harms; specifically, minority populations, low-income populations, and indigenous peoples (59 FR 7629, February 16, 1994). Additionally, Executive Order 13985 is intended to advance racial equity and support underserved communities through Federal government actions (86 FR 7009, January 20, 2021). The EPA defines EJ as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and

enforcement of environmental laws, regulations, and policies.'' [171] The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.'' In recognizing that minority and low-income populations often bear an unequal burden of environmental harms and risks, the EPA continues to consider ways of protecting them from adverse public health and environmental effects of air pollution.

The locations of the new, modified, and reconstructed sources that will become subject to NSPS subparts IIIa, NNNa, and RRRa are not known. Therefore, to examine the potential for any EJ issues that might be associated with the proposed subparts, we performed a proximity demographic analysis for 266 existing facilities that are currently subject to NSPS subpart III, NNN, or RRR. These represent facilities that might modify or reconstruct in the future and become subject to the proposed NSPS requirements. This proximity demographic analysis characterized the individual demographic groups of the populations living within 5 km (~3.1 miles) and within 50 km (~31 miles) of the existing facilities. The EPA then compared the data from this analysis to the national average for each of the demographic groups.

The proximity demographic analysis shows that, within 5 km of the facilities, the percent of the population that is African American is almost double the national average (23 percent versus 12 percent). In addition, the percent of the population within 5 km of the facilities that is Hispanic or Latino is also above the national average (23 percent versus 19 percent). The percent of people within 5 km living below the poverty level is significantly higher than the national average (20 percent versus 13 percent). The percent of people living within 5 km that are over 25 without a high school diploma is also higher than the national average (17 percent versus 12 percent). The proximity demographics analysis shows that within 50 km of the facilities, the percent of the population that is African American is above the national average (18 percent versus 12 percent). At 50 km, the remaining percentages for the demographics are similar to or below the national average.

TABLE 40—PROXIMITY DEMOGRAPHIC ASSESSMENT RESULTS FOR EXISTING FACILITIES SUBJECT TO NSPS SUBPARTS III, NNN, OR RRR

Demographic group	Nationwide	Population within 50 km of 266 facilities	Population within 5 km of 266 facilities
Total Population	328,016,242	96,017,770	4,624,154
Race and Ethnicity by Percent			
White	60	59	48
African American	12	18	23
Native American	0.7	0.4	0.4
Hispanic or Latino (includes white and nonwhite)	19	15	23
Other and Multiracial	8	7	5
Income by Percent			
Below Poverty Level	13	14	20
Above Poverty Level	87	86	80
Education by Percent			
Over 25 and without a High School Diploma	12	12	17
Over 25 and with a High School Diploma	88	88	83
Linguistically Isolated by Percent			
Linguistically Isolated	5	5	6

Notes:
• The nationwide population count and all demographic percentages are based on the Census' 2015–2019 American Community Survey five-year block group averages and include Puerto Rico. Demographic percentages based on different averages may differ. The total population counts are based on the 2010 Decennial Census block populations.
• To avoid double counting, the ''Hispanic or Latino'' category is treated as a distinct demographic category for these analyses. A person is identified as one of five racial/ethnic categories above: White, African American, Native American, Other and Multiracial, or Hispanic/Latino. A person who identifies as Hispanic or Latino is counted as Hispanic/Latino for this analysis, regardless of what race this person may have also identified as in the Census.

The proposed NSPS subparts IIIa, NNNa, and RRRa cover VOC emissions from certain process vents in the SOCMI from sources that are constructed, reconstructed, or modified after April 25, 2023. The proposed NSPS subparts IIIa, NNNa, and RRRa will result in reduced VOC emissions by requiring all vent streams from an affected facility to be controlled, eliminating the relief valve discharge exemption from the definition of ''vent stream'' such that any relief valve discharge to the atmosphere of a vent stream is a violation of the emissions standard, and prohibiting an owner or operator from bypassing the APCD at any time, and if a bypass is used, it is considered a violation. In addition, we are proposing the same operating and monitoring requirements for flares that we are proposing for flares subject to the HON, the same work practice standards for maintenance vents that we are

[171] See footnote 168.

proposing for HON process vents, and the same monitoring requirements that we are proposing for HON process vents for adsorbers that cannot be regenerated and regenerative adsorbers that are regenerated offsite (see section III.C.3.b of this preamble).

The methodology and the results (including facility-specific results) of the demographic analysis are presented in the document titled *Analysis of Demographic Factors for Populations Living Near Existing Facilities Subject to NSPS Subparts III, NNN, or RRR,* which is available in the docket for this action.

G. What analysis of children's environmental health did we conduct?

This action proposes to address risk from, among other HAP, EtO and chloroprene. In addition, the EPA's Policy on Children's Health [172] also applies to this action. Accordingly, we have evaluated the environmental health or safety effects of EtO and chloroprene emissions and exposures on children.

Because EtO and chloroprene are mutagenic (*i.e.,* they can damage DNA), children are expected to be more susceptible to their harmful effects. To take this into account, as part of the risk assessment in support of this rulemaking, the EPA followed its guidelines [173] and applied age-dependent adjustment factors (ADAFs) for childhood exposures (from birth up to 16 years of age). With the ADAF applied to account for greater susceptibility of children, the adjusted EtO inhalation URE is 5×10^{-3} per μg/m^3 and the adjusted chloroprene inhalation URE is 4.8×10^{-4} per μg/m^3. It should be noted that, because EtO and chloroprene are mutagenic, emission reductions proposed in this preamble will be particularly beneficial to children. The results of the risk assessment are contained in sections III.A and B of this preamble and further documented in the risk reports, *Residual Risk Assessment for the SOCMI Source Category in Support of the 2023 Risk and Technology Review Proposed Rule* and *Residual Risk Assessment for the Polymers & Resins I Neoprene Production Source Category in Support of the 2023 Risk and Technology Review Proposed Rule,* which are available in the docket for this rulemaking.

V. Request for Comments

We solicit comments on this proposed action. In addition to general comments on this proposed action, we are also interested in additional data that may improve the analyses. We are specifically interested in receiving any information regarding developments in practices, processes, and control technologies that reduce emissions. We are also interested in receiving information on costs, emissions, and product recovery and we request comment on how to address the non-monetized costs and benefits of the proposed rule. We request comment on data and approaches to monetize the health benefits of reducing exposure to ethylene oxide, chloroprene, benzene, 1,3-butadiene, ethylene dichloride, vinyl chloride, chlorine, maleic anhydride, and acrolein. For our production estimates, we request comment on the assumptions of the simulation model and their consistency with market conditions and dynamics. We welcome specific comment on impacts on downstream industries and markets, including prices for medical supplies, foods, microchips, semiconductors, gasoline, or other products. In addition, we request estimates of any potential loss of production while bringing facilities into compliance and forgone returns due to displaced investment. Finally, the EPA attempted to ensure that the SSM provisions we are proposing to eliminate are inappropriate, unnecessary, or redundant in the absence of the SSM exemption and are specifically seeking comment on whether we have successfully done so.

With respect to EtO emissions from equipment leaks, given the uncertainty of emissions from these fugitive sources and that they drive risk for a number of HON facilities (*i.e.,* seven HON facilities present ≥100-in-1 million cancer risk from emissions of EtO from equipment leaks at HON processes), the EPA is also soliciting comment on whether additional control options should be considered for equipment leaks beyond those discussed in section III.B.2.a.ii of this preamble, which proposes that valves, connectors, and pumps in EtO service be monitored monthly using EPA Method 21 of 40 CFR part 60, appendix A–7, with leak definitions of 100 ppm, 100 ppm, and 500 ppm, respectively. In particular, the EPA is aware of a number of additional technologies used by other regulated industries that could be implemented to monitor and/or reduce leaks of EtO, including requiring use of ''leakless'' (*i.e.,* low-emitting) equipment for valves and pumps in EtO service, use of optical gas imaging (OGI) (*i.e.,* use of a thermal infrared camera) to find large leaks faster, and use of leak detection sensor networks (LDSNs) that could potentially identify leaks of EtO at HON facilities.[174] OGI refers to the creation of images of gas emissions through thermal infrared cameras. While the application, specification, and target gases of an OGI instrument may differ, the general function of an OGI camera is to detect the infrared energy of the target gas and filter out the light outside of the infrared frequency range to create an image of the target gas plume. In the context of leak detection, a hand-held OGI camera can create a video image of a plume of gas emanating from a leak. A LDSN comprises a network of leak detection sensor nodes installed to provide coverage of all LDAR applicable components in a process unit and an accompanying analytics platform for identifying potential leak source locations. A short-term excursion of an individual sensor's output above a set baseline level would indicate a possible leak. Facilities can investigate the possible leak within the potential leak source location. The network, analytics platform, and detection response framework are generally designed to enable timely detection of significant emissions so that facilities can more rapidly mitigate leaks.

As EPA does not have sufficient information to evaluate potential additional HAP reductions that may be realized by these technologies in the chemical sector, we solicit comment on the emissions reductions that have been or could be achieved by use of ''leakless'' valves and pumps, use of OGI, and use of LDSNs, the costs and cost-effectiveness of applying these technologies, including any cost-effectiveness comparisons of applying the technologies for different components and at different frequencies, and any relevant available data and studies.

We also request comment on whether and how the application of these technologies would reduce risk, and whether and how EPA should consider application of these technologies to reinforce or enhance the proposed

[172] Children's Health Policy Available at: *https://www.epa.gov/children/childrens-health-policy-and-plan.*

[173] U.S. EPA. 2005. Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens. U.S. Environmental Protection Agency, Washington, DC, EPA/630/R–03/003F. *https://www.epa.gov/sites/default/files/2013-09/documents/childrens_supplement_final.pdf.*

[174] See, *e.g.,* 40 CFR 60.18(g), 40 CFR 61.65(b)(8), 40 CFR 63.11(c), and 40 CFR 63.11956; U.S. Envtl. Prot. Agency, *Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review,* 87 FR 74,702 (Dec. 6, 2022); Notice of Final for Approval of Alternative Means of Emission Limitation (88 FR 8844, February 10, 2023).

equipment leak control requirements. EPA also requests comments on ways to streamline approval of alternative LDAR programs, use of remote sensing techniques, use of sensor networks, or other alternatives for detection of equipment leaks.

VI. 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

Under section 3(f)(1) of Executive Order 12866, this action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to recommendations received as part of Executive Order 12866 review have been documented in the docket. The EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis, the *Regulatory Impact Analysis,* is available in the docket for this action.

To satisfy requirements of E.O. 12866, the EPA projected the emissions reductions, costs, and benefits that may result from these proposed rulemakings. These results are presented in detail in the regulatory impact analysis (RIA) accompanying this proposal developed in response to E.O. 12866. We present these results for each of the 10 subparts included in this proposed action, and also cumulatively. This action is economically significant according to E.O. 12866 due to the proposed amendments to the HON. The RIA focuses on the elements of the proposed rulemaking that are likely to result in quantifiable cost or emissions changes compared to a baseline without the proposal that incorporates changes to regulatory requirements. We estimated the cost, emissions, and benefits for the 2024 to 2038 period. We show the PV and EAV of costs, benefits, and net benefits of this action in 2021 dollars.

The initial analysis year in the RIA is 2024 because we assume the large majority of impacts associated with the proposed rulemakings will begin in that year. The NSPS will take effect immediately upon the effective date of the final rule (*i.e.,* 60 days after publication of the final rule in the **Federal Register**) and impact sources constructed after publication of the proposed rule, but these impacts are much lower than those of the other three NESHAP rulemakings in this action. The other three rules, all under the provisions of CAA section 112, will also take effect 60 days after publication of the final rule in the **Federal Register**, but not require compliance with new requirements in some cases until three years after the effective date). Therefore, their impacts (at least the great majority of them) will begin in 2024. The final analysis year for benefits and costs is 2038, which allows us to provide 15 years of projected impacts after all of these rules are assumed to require compliance.

The cost analysis presented in the RIA reflects a nationwide engineering analysis of compliance cost and emissions reductions, of which there are two main components. The first component is a set of representative or model plants for each regulated facility, segment, and control option. The characteristics of the model plant include typical equipment, operating characteristics, and representative factors including baseline emissions and the costs, emissions reductions, and product recovery resulting from each control option. The second component is a set of projections of data for affected facilities, distinguished by vintage, year, and other necessary attributes (*e.g.,* precise content of material in storage vessels). Impacts are calculated by setting parameters on how and when affected facilities are assumed to respond to a particular regulatory regime, multiplying data by model plant cost and emissions estimates, differencing from the baseline scenario, and then summing to the desired level of aggregation. In addition to emissions reductions, some control options result in product recovery, which can then be sold where possible. Where applicable, we present projected compliance costs with and without the projected revenues from product recovery.

The EPA expects health benefits due to the emissions reductions projected under these proposed rulemakings. We expect that HAP emission reductions will improve health and welfare associated with exposure by those affected by these emissions. In addition, the EPA expects that VOC emission reductions that will occur concurrent with the reductions of HAP emissions will improve air quality and are likely to improve health and welfare associated with exposure to ozone, $PM_{2.5}$, SO_2, and HAP. The EPA also expects disbenefits from secondary increases of CO_2, NO_X, CO, and benefits from reductions in methane emissions associated with the control options included in the cost analysis. We estimate the social benefits of GHG reductions expected to occur as a result of the proposed standards using estimates of the social cost of greenhouse gases (SC–GHG),[175] specifically using the social cost of carbon (SC–CO_2), social cost of methane (SC–CH_4), and social cost of nitrous oxide (SC–N_2O). The SC–GHG is the monetary value of the net harm to society associated with a marginal increase in GHG emissions in a given year, or the benefit of avoiding that increase. In principle, SC–GHG includes the value of all climate change impacts (both negative and positive), including (but not limited to) changes in net agricultural productivity, human health effects, property damage from increased flood risk and natural disasters, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services. The SC–GHG, therefore, reflects the societal value of reducing emissions of the gas in question by one metric ton and is the theoretically appropriate value to use in conducting benefit-cost analyses of policies that affect GHG emissions. In practice, data and modeling limitations naturally restrain the ability of SC–GHG estimates to include all the important physical, ecological, and economic impacts of climate change, such that the estimates are a partial accounting of climate change impacts and will therefore tend to be underestimates of the marginal benefits of abatement. The EPA and other Federal agencies began regularly incorporating SC–GHG estimates in their benefit-cost analyses conducted under Executive Order (E.O.) 12866 [176] since 2008, following a Ninth Circuit Court of Appeals remand of a rule for failing to monetize the benefits of reducing GHG emissions in that rulemaking process. We conduct such

[175] Estimates of the social cost of greenhouse gases are gas-specific (*e.g.,* social cost of carbon (SC–CO_2), social cost of methane (SC–CH_4), social cost of nitrous oxide (SC–N_2O)), but collectively they are referenced as the social cost of greenhouse gases (SC–GHG).

[176] Presidents since the 1970s have issued executive orders requiring agencies to conduct analysis of the economic consequences of regulations as part of the rulemaking development process. E.O. 12866, released in 1993 and still in effect today, requires that for all significant regulatory actions, an agency provide an assessment of the potential costs and benefits of the regulatory action, and that this assessment include a quantification of benefits and costs to the extent feasible. Many statutes also require agencies to conduct at least some of the same analyses required under E.O. 12866, such as the Energy Policy and Conservation Act, which mandates the setting of fuel economy regulations. For purposes of this action, monetized climate benefits are presented for purposes of providing a complete benefit-cost analysis under E.O. 12866 and other relevant executive orders. The estimates of change in GHG emissions and the monetized benefits associated with those changes play no part in the record basis for this action.

an analysis to monetize the benefits of reducing GHG emissions (or disbenefits, if these emissions increase) for this proposal as the EPA has done for recent rulemakings (*e.g.,* the recently promulgated Good Neighbor rule).

Discussion of the monetized and non-monetized benefits and climate disbenefits can be found in Chapter 4 of the RIA which is available in the docket for this rulemaking.

Tables 41 through 45 of this preamble present the emission changes, and PV and EAV of the projected monetized benefits, compliance costs, and net benefits over the 2024 to 2038 period under the proposed rulemaking for each subpart. Table 46 of this preamble presents the same results for the cumulative impact of these rulemakings. All discounting of impacts presented, except for compliance costs, uses discount rates of 3 and 7 percent.

TABLE 41—MONETIZED BENEFITS, COSTS, AND NET BENEFITS OF THE PROPOSED HON AMENDMENTS, 2024 THROUGH 2038

[Dollar estimates in millions of 2021 dollars] [a]

	3 Percent discount rate		7 Percent discount rate	
	PV	EAV	PV	EAV
Benefits [b]	$78 and $690	$6.5 and $58	$53 and $470	$5.8 and $51.
Climate Disbenefits (3 percent) [c]	$(25.4)	$(2.1)	$(25.4)	$(2.1).
Net Compliance Costs [d]	$1,385	$116	$922	$101.
Compliance Costs	$1,393	$117	$927	$102.
Value of Product Recovery	$8	$1	$5	$0.8.
Net Benefits	$(1,280) and $(670)	$(107) and $(56)	$(844) and $(427)	$(93) and $(48).

Nonmonetized Benefits: HAP emissions reductions of 5,726 tpy including 58 tpy reduction in ethylene oxide emissions. Health effects of reduced exposure to ethylene oxide and also chloroprene, benzene, 1,3-butadiene, vinyl chloride, ethylene dichloride, chlorine, maleic anhydride, and acrolein.

[a] Values rounded to two significant figures. Totals may not appear to add correctly due to rounding. Short tons are standard English tons (2,000 pounds).

[b] Monetized benefits include ozone related health benefits associated with reductions in VOC emissions. The health benefits are associated with several point estimates and are presented at real discount rates of 3 and 7 percent. The two benefits estimates are separated by the word "and" to signify that they are two separate estimates. The estimates do not represent lower- and upper-bound estimates. Benefits from annual HAP reductions and VOC reductions outside of the ozone season remain unmonetized and are thus not reflected in the table. Climate benefits and disbenefits are estimated at a real discount rate of 3 percent. The unmonetized effects also include disbenefits resulting from the secondary impact of an increase in CO emissions. Please see Chapter 4 of the RIA for more discussion of the health and climate benefits and disbenefits.

[c] Climate benefits and disbenefits are based on changes (decreases and increases) in CO_2, methane and N_2O emissions and are calculated using four different estimates of the social cost of carbon (SC–GHG) (model average at 2.5 percent, 3 percent, and 5 percent discount rates; 95th percentile at 3 percent discount rate). For the presentational purposes of this table, we show the benefits and disbenefits associated with the average SC–GHG at a 3 percent discount rate, but the Agency does not have a single central SC–GHG point estimate. We emphasize the importance and value of considering the disbenefits calculated using all four SC–GHG estimates. As discussed in Chapter 4 of the RIA, a consideration of climate disbenefits calculated using discount rates below 3 percent, including 2 percent and lower, is also warranted when discounting intergenerational impacts. The use of parentheses surrounding a number denotes a negative value for that number. For climate disbenefits, a negative disbenefit is a benefit (and thus a positive value).

[d] Net compliance costs are the rulemaking costs minus the value of recovered product. A negative net compliance costs occurs when the value of the recovered product exceeds the compliance costs.

TABLE 42—MONETIZED BENEFITS, COMPLIANCE COSTS, AND NET BENEFITS OF THE PROPOSED P&R I AMENDMENTS, 2024 THROUGH 2038

[Dollar estimates in millions of 2021 dollars] [a]

	3 Percent discount rate		7 Percent discount rate	
	PV	EAV	PV	EAV
Benefits [b]	$2.6 and $23	$0.22 and $1.9	$1.8 and $16	$0.19 and $1.7.
Climate Disbenefits (3 percent) [c]	$40.5	$3.4	$40.5	$3.4.
Net Compliance Costs [d]	$121	$10	$78	$8.6.
Compliance Costs	$122	$10.2	$79	$8.7.
Value of Product Recovery	$1	$0.2	$1	$0.1.
Net Benefits	$(159) and $(139)	$(13) and $(12)	$(116) and $(103)	$(12) and $(10).

Nonmonetized Benefits: HAP emissions reductions 326 tpy including 14 tpy reduction in chloroprene emissions. Health effects of reduced exposure to chloroprene and benzene, 1,3-butadiene, vinyl chloride, ethylene dichloride, chlorine, maleic anhydride, and acrolein.

[a] Values rounded to two significant figures. Totals may not appear to add correctly due to rounding. Short tons are standard English tons (2,000 pounds).

[b] Monetized benefits include ozone related health benefits associated with reductions in VOC emissions. The health benefits are associated with several point estimates and are presented at real discount rates of 3 and 7 percent. The two benefits estimates are separated by the word "and" to signify that they are two separate estimates. The estimates do not represent lower- and upper-bound estimates and should not be summed. Benefits from annual HAP reductions and VOC reductions outside of the ozone season remain unmonetized and are thus not reflected in the table.

[c] Climate benefits and disbenefits are based on changes (decreases and increases) in CO_2, methane and N_2O emissions and are calculated using four different estimates of the social cost of carbon (SC–GHG) (model average at 2.5 percent, 3 percent, and 5 percent discount rates; 95th percentile at 3 percent discount rate). For the presentational purposes of this table, we show the benefits and disbenefits associated with the average SC–GHG at a 3 percent discount rate, but the Agency does not have a single central SC–GHG point estimate. We emphasize the importance and value of considering the disbenefits calculated using all four SC–GHG estimates. As discussed in Chapter 4 of the RIA, a consideration of climate disbenefits calculated using discount rates below 3 percent, including 2 percent and lower, is also warranted when discounting intergenerational impacts. The use of parentheses surrounding a number denotes a negative value for that number.

[d] Net compliance costs are the rulemaking costs minus the value of recovered product. A negative net compliance costs occurs when the value of the recovered product exceeds the compliance costs.

TABLE 43—MONETIZED BENEFITS, COMPLIANCE COSTS, EMISSION REDUCTIONS AND NET BENEFITS OF THE PROPOSED P&R II AMENDMENTS, 2024 THROUGH 2038

[Dollar estimates in millions of 2021 dollars] [a]

	3 Percent discount rate		7 Percent discount rate	
	PV	EAV	PV	EAV
Benefits [b]	<$0.1	<$0.1	<$0.1	<$0.1.
Net Compliance Costs [c]	$4	$0.4	$3	$0.4
Compliance Costs	$4	$0.4	$3	$0.4
Value of Product Recovery	$0	$0	$0	$0
Net Benefits	$(4)	$(0.4)	$(3)	$(0.4).

Nonmonetized Benefits: HAP emissions reductions 1 tpy. Health effects of reduced exposure to epichlorohydrin.

[a] Values rounded to two significant figures. Totals may not appear to add correctly due to rounding. Short tons are standard English tons (2,000 pounds).

[b] Monetized benefits include ozone related health benefits associated with reductions in VOC emissions. The health benefits are associated with several point estimates and are presented at real discount rates of 3 and 7 percent. The two benefits estimates are separated by the word "and" to signify that they are two separate estimates. The estimates do not represent lower- and upper-bound estimates. Benefits from VOC reductions outside of the ozone season remain unmonetized and are thus not reflected in the table.

[c] Net compliance costs are the rulemaking costs minus the value of recovered product. A negative net compliance costs occurs when the value of the recovered product exceeds the compliance costs.

TABLE 44—MONETIZED BENEFITS, COSTS, AND NET BENEFITS OF PROPOSED NSPS SUBPART VVb, 2024 THROUGH 2038

[Dollar estimates in millions of 2021 dollars] [a]

	3 Percent discount rate		7 Percent discount rate	
	PV	EAV	PV	EAV
Benefits [b]	$1.2 and $11	$0.10 and $0.93	$0.85 and $7.5	$0.09 and $0.82.
Net Compliance Costs [c]	$11	$0.9	$8	$0.9.
Compliance Costs	$13.3	$1.1	$9.7	$1.1.
Value of Product Recovery	$2.3	$0.2	$1.7	$0.2.
Net Benefits	$(9.8) and $0	$(0.8) and $0.03	$(7.15) and $(0.5)	$(0.81) and $(0.08).

[a] Values rounded to two significant figures. Totals may not appear to add correctly due to rounding. Short tons are standard English tons (2,000 pounds).

[b] Monetized benefits include ozone related health benefits associated with reductions in VOC emissions. The health benefits are associated with several point estimates and are presented at real discount rates of 3 and 7 percent. The two benefits estimates are separated by the word "and" to signify that they are two separate estimates. The estimates do not represent lower- and upper-bound estimates. Benefits from HAP reductions and VOC reductions outside of the ozone season remain unmonetized and are thus not reflected in the table. There are no climate benefits and disbenefits for this proposed rule.

[c] Net compliance costs are the rulemaking costs minus the value of recovered product. A negative net compliance costs occurs when the value of the recovered product exceeds the compliance costs.

TABLE 45—MONETIZED BENEFITS, COSTS, AND NET BENEFITS OF PROPOSED NSPS SUBPARTS IIIa, NNNa, AND RRRa, 2024 THROUGH 2038

[Dollar estimates in millions of 2021 dollars] [a]

	3 Percent discount rate		7 Percent discount rate	
	PV	EAV	PV	EAV
Benefits [b]	$4.6 and $41	$0.39 and $3.5	$3.2 and $28	$0.35 and $3.0.
Climate Disbenefits (3 percent) [c]	$(6.8)	$(0.57)	$(6.8)	$(0.57).
Net Compliance Costs [d]	$56	$4.7	$40	$4.4.
Compliance Costs	$56	$4.7	$40	$4.4.
Value of Product Recovery	$0	$0	$0	$0.
Net Benefits	$(45) and $(8)	$(3.7) and $(0.6)	$(30) and $(5)	$(3.5) and $(0.8).

[a] Values rounded to two significant figures. Totals may not appear to add correctly due to rounding. Short tons are standard English tons (2,000 pounds).

[b] Monetized benefits include ozone related health benefits associated with reductions in VOC emissions. The health benefits are associated with several point estimates and are presented at real discount rates of 3 and 7 percent. The two benefits estimates are separated by the word ''and'' to signify that they are two separate estimates. The estimates do not represent lower- and upper-bound estimates. Benefits from HAP reductions and VOC reductions outside of the ozone season remain unmonetized and are thus not reflected in the table. Climate disbenefits are estimated at a real discount rate of 3 percent. The unmonetized effects also include disbenefits resulting from the secondary impact of an increase in CO emissions. Please see Chapter 4 of the RIA for more discussion of the climate disbenefits.

[c] Climate disbenefits (inclusive of benefits) are based on changes (increases) in CO_2 and N_2O emissions and decreases in methane emissions and are calculated using four different estimates of the social cost of carbon (SC–GHG) (model average at 2.5 percent, 3 percent, and 5 percent discount rates; 95th percentile at 3 percent discount rate). For the presentational purposes of this table, we show the disbenefits associated with the average SC–GHG at a real 3 percent discount rate, but the Agency does not have a single central SC–GHG point estimate. We emphasize the importance and value of considering the disbenefits calculated using all four SC–GHG estimates. Please see Table 4–11 of the RIA for the full range of SC–GHG estimates. As discussed in Chapter 4 of the RIA, a consideration of climate benefits and disbenefits calculated using discount rates below 3 percent, including 2 percent and lower, is also warranted when discounting intergenerational impacts.

[d] Net compliance costs are the rulemaking costs minus the value of recovered product. A negative net compliance costs occurs when the value of the recovered product exceeds the compliance costs. A number in parentheses denotes a negative value.

TABLE 46—CUMULATIVE MONETIZED BENEFITS, COSTS, EMISSION REDUCTIONS AND NET BENEFITS OF THE PROPOSED RULEMAKINGS, 2024 THROUGH 2038

[Dollar estimates in millions of 2021 dollars] [a]

	3 Percent discount rate		7 Percent discount rate	
	PV	EAV	PV	EAV
Benefits [b]	$81 and $730	$6.8 and $61	$56 and $490	$6.1 and $54.
Climate Disbenefits (3 percent) [c]	$8.2	$0.7	$8.2	$0.7.
Net Compliance Costs [d]	$1,579	$132	$1,052	$121.
Compliance Costs	$1,590	$133.4	$1,059.7	$122.1.
Value of Product Recovery	$11	$1.4	$7.7	$1.1.
Net Benefits	$(1,506) and $(857)	$(126) and $(71)	$(1,100) and $(570)	$(110) and $(63).

Nonmonetized Benefits: HAP emissions reductions of 6,053 tons of HAP. Health effects of reduced exposure to ethylene oxide, chloroprene, benzene, 1,3-butadiene, vinyl chloride, ethylene dichloride, chlorine, maleic anhydride, acrolein, and epichlorohydrin.

[a] Values rounded to two significant figures. Totals may not appear to add correctly due to rounding. Short tons are standard English tons (2,000 pounds).

[b] Monetized benefits include ozone related health benefits associated with reductions in VOC emissions. The health benefits are associated with several point estimates and are presented at real discount rates of 3 and 7 percent. The two benefits estimates are separated by the word ''and'' to signify that they are two separate estimates. The estimates do not represent lower- and upper-bound estimates. Benefits from HAP reductions and VOC reductions outside of the ozone season remain unmonetized and are thus not reflected in the table. Climate disbenefits (inclusive of benefits) are estimated at a real discount rate of 3 percent. The unmonetized effects also include disbenefits resulting from the secondary impact of an increase in CO emissions. Please see Chapter 4 of the RIA for more discussion of the climate disbenefits.

[c] Climate disbenefits are based on changes (increases) in CO_2 and N_2O emissions and decreases in methane emissions and are calculated using four different estimates of the social cost of carbon (SC–GHG) (model average at 2.5 percent, 3 percent, and 5 percent discount rates; 95th percentile at 3 percent discount rate). For the presentational purposes of this table, we show the disbenefits associated with the average SC–GHG at a 3 percent discount rate, but the Agency does not have a single central SC–GHG point estimate. We emphasize the importance and value of considering the disbenefits calculated using all four SC–GHG estimates. Please see Table 4–11 of the RIA for the full range of SC–GHG estimates. As discussed in Chapter 4 of the RIA, a consideration of climate disbenefits calculated using discount rates below 3 percent, including 2 percent and lower, is also warranted when discounting intergenerational impacts.

[d] Net compliance costs are the rulemaking costs minus the value of recovered product. A negative net compliance costs occurs when the value of the recovered product exceeds the compliance costs.

B. Paperwork Reduction Act (PRA)

1. HON

The information collection activities in this proposed rule have been submitted for approval to the OMB under the PRA. The ICR document that the EPA prepared has been assigned EPA ICR number 2753.01. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The EPA is proposing amendments to the HON that revise provisions pertaining to emissions from flares, PRDs, process vents, storage vessels, pressure vessels, storage vessel degassing, heat exchange systems, maintenance vents, wastewater, and equipment leaks. The EPA is also proposing to add requirements pertaining to EtO emissions from flares, process vents, storage vessels, heat exchange systems, equipment leaks, and wastewater; and dioxins and furans emissions from process vents. In addition, the EPA is proposing amendments to the HON that revise provisions pertaining to emissions during periods of SSM, add requirements for electronic reporting of periodic reports and performance test results, fenceline monitoring, carbon adsorbers, and bypass monitoring, and make other minor clarifications and corrections. This information will be collected to assure compliance with the HON.

- Respondents/affected entities: Owners or operators of HON facilities. Respondent's obligation to respond: Mandatory (40 CFR part 63, subparts F, G, H, and I).
- Estimated number of respondents: 209 (assumes two new respondents over the next 3 years). Frequency of response: Initially, quarterly, semiannually, and annually.
- Total estimated burden: average annual recordkeeping and reporting burden is 83,600 hours (per year) to comply with the proposed amendments in the HON. Burden is defined at 5 CFR 1320.3(b).
- Total estimated cost: average annual cost is $70,900,000 (per year) which includes $62,700,000 annualized capital and operations and maintenance costs, to comply with the proposed amendments in the HON.

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 OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the

accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than May 25, 2023. The EPA will respond to any ICR-related comments in the final rule.

2. P&R I

The information collection activities in this proposed rule have been submitted for approval to the OMB under the PRA. The ICR document that the EPA prepared has been assigned EPA ICR number 2410.06. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The EPA is proposing amendments to P&R I that revise provisions pertaining to emissions from flares, PRDs, continuous process vents, batch process vents, storage vessels, pressure vessels, storage vessel degassing, heat exchange systems, maintenance vents, wastewater, and equipment leaks. The EPA is also proposing to add requirements pertaining to: chloroprene emissions from process vents, storage vessels, and wastewater; and dioxins and furans emissions from continuous process vents and batch process vents. In addition, the EPA is proposing amendments to P&R I that revise provisions pertaining to emissions during periods of SSM, add requirements for electronic reporting of periodic reports and performance test results, fenceline monitoring, carbon adsorbers, and bypass monitoring, and make other minor clarifications and corrections. This information will be collected to assure compliance with P&R I.

- Respondents/affected entities: Owners or operators of P&R I facilities. Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart U).
- Estimated number of respondents: 19 (assumes no new respondents over the next 3 years). Frequency of response: Initially, quarterly, semiannually, and annually.
- Total estimated burden: average annual recordkeeping and reporting burden is 8,126 hours (per year) to comply with the proposed amendments in P&R I. Burden is defined at 5 CFR 1320.3(b).
- Total estimated cost: average annual cost is $3,480,000 (per year) which includes $2,680,000 annualized capital and operations and maintenance costs, to comply with the proposed amendments in P&R I.

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 OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than May 25, 2023. The EPA will respond to any ICR-related comments in the final rule.

3. P&R II

The information collection activities in this proposed rule have been submitted for approval to the OMB under the PRA. The ICR document that the EPA prepared has been assigned EPA ICR number 1681.11. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The EPA is proposing amendments to P&R II to add requirements pertaining to: heat exchange systems, PRDs, dioxins and furans emissions from process vents, and maintenance vents. In addition, the EPA is proposing amendments to P&R II that revise provisions pertaining to emissions during periods of SSM, add requirements for electronic reporting of periodic reports and performance test results, and make other minor clarifications and corrections. This information will be collected to assure compliance with P&R II.

- Respondents/affected entities: Owners or operators of P&R II facilities. Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart W).
- Estimated number of respondents: 5 (assumes no new respondents over the next 3 years). Frequency of response: Initially, semiannually, and annually.
- Total estimated burden: average annual recordkeeping and reporting burden is 202 hours (per year) to comply with the proposed amendments in P&R II. Burden is defined at 5 CFR 1320.3(b).
- Total estimated cost: average annual cost is $1,780,000 (per year) which includes $1,760,000 annualized capital and operations and maintenance costs, to comply with the proposed amendments in P&R II.

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 OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than May 25, 2023. The EPA will respond to any ICR-related comments in the final rule.

4. NSPS Subparts VV, VVa, III, NNN, and RRR

This action does not impose any new information collection burden under the PRA for NSPS subparts VV, VVa, III, NNN, and RRR. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB Control number 2060–0443 for 40 CFR part 60 subparts VV, VVa, III, NNN, and RRR (this one OMB Control number is for the Consolidated Federal Air Rule in 40 CFR part 65 which presents the burden for complying with 40 CFR part 65, but also presents the burden for facilities complying with each individual subpart). This action is believed to result in no changes to the information collection requirements of these NSPS, so that the information collection estimate of project cost and hour burden from these NSPS have not been revised.

5. NSPS Subpart VVb

The information collection activities in this proposed rule have been submitted for approval to the OMB under the PRA. The ICR document that the EPA prepared has been assigned EPA ICR number 2755.01. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The EPA is proposing in a new NSPS subpart VVb the same requirements in NSPS subpart VVa plus requiring that

all gas/vapor and light liquid valves be monitored quarterly at a leak definition of 100 ppm and all connectors be monitored once every 12 months at a leak definition of 500 ppm. In addition, the EPA is proposing to remove SSM provisions (the standards apply at all times), add requirements for electronic reporting of periodic reports, and make other minor clarifications and corrections. This information will be collected to assure compliance with the NSPS subpart VVb.

• Respondents/affected entities: Owners or operators of certain equipment leaks in the SOCMI. Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart VVb).

• Estimated number of respondents: 36 (assumes 36 new respondents over the next 3 years). Frequency of response: Initially, occasionally, and annually.

• Total estimated burden: average annual recordkeeping and reporting burden is 5,414 hours (per year) to comply with all of the requirements in the NSPS. Burden is defined at 5 CFR 1320.3(b).

• Total estimated cost: average annual cost is $4,540,000 (per year) which includes $4,000,000 annualized capital and operations and maintenance costs, to comply with all of the requirements in the NSPS.

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 OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than May 25, 2023. The EPA will respond to any ICR-related comments in the final rule.

6. NSPS Subpart IIIa

The information collection activities in this proposed rule have been submitted for approval to the OMB under the PRA. The ICR document that the EPA prepared has been assigned EPA ICR number 2756.01. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The EPA is proposing requirements for new, modified, or reconstructed sources as follows: require owners and operators reduce emissions of TOC (minus methane and ethane) from all vent streams of an affected facility (and not allow the alternative of maintaining a TRE index value greater than 1 without the use of a control device); exclude SSM provisions (and instead, the standards apply at all times); revise monitoring requirements for flares; add maintenance vent requirements; revise requirements for adsorber monitoring; exclude the relief valve discharge exemption such that any relief valve discharge to the atmosphere of a vent stream is a violation of the emissions standard; and prohibit an owner or operator from bypassing the control device at any time, and to report any such violation. This information will be collected to assure compliance with the NSPS subpart IIIa.

• Respondents/affected entities: Owners or operators of air oxidation unit processes in the SOCMI. Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart IIIa).

• Estimated number of respondents: 6 (assumes 6 new respondents over the next 3 years). Frequency of response: Initially, semiannually, and annually.

• Total estimated burden: average annual recordkeeping and reporting burden is 275 hours (per year) to comply with all of the requirements in the NSPS. Burden is defined at 5 CFR 1320.3(b).

• Total estimated cost: average annual cost is $3,820,000 (per year) which includes $3,800,000 annualized capital and operations and maintenance costs, to comply with all of the requirements in the NSPS.

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 OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than May 25, 2023. The EPA will respond to any ICR-related comments in the final rule.

7. NSPS Subpart NNNa

The information collection activities in this proposed rule have been submitted for approval to the OMB under the PRA. The ICR document that the EPA prepared has been assigned EPA ICR number 2757.01. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The EPA is proposing requirements for new, modified, or reconstructed sources as follows: require owners and operators reduce emissions of TOC (minus methane and ethane) from all vent streams of an affected facility (and not allow the alternative of maintaining a TRE index value greater than 1 without the use of a control device); exclude SSM provisions (and instead, the standards apply at all times); revise monitoring requirements for flares; add maintenance vent requirements; revise requirements for adsorber monitoring; exclude the relief valve discharge exemption such that any relief valve discharge to the atmosphere of a vent stream is a violation of the emissions standard; and prohibit an owner or operator from bypassing the control device at any time, and to report any such violation. This information will be collected to assure compliance with the NSPS subpart NNNa.

• Respondents/affected entities: Owners or operators of distillation operations in the SOCMI. Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart NNNa).

• Estimated number of respondents: 7 (assumes 7 new respondents over the next 3 years). Frequency of response: Initially, semiannually, and annually.

• Total estimated burden: average annual recordkeeping and reporting burden is 288 hours (per year) to comply with all of the requirements in the NSPS. Burden is defined at 5 CFR 1320.3(b).

• Total estimated cost: average annual cost is $4,460,000 (per year) which includes $4,430,000 annualized capital and operations and maintenance costs, to comply with all of the requirements in the NSPS.

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 OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden

estimates, and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than May 25, 2023. The EPA will respond to any ICR-related comments in the final rule.

8. NSPS Subpart RRRa

The information collection activities in this proposed rule have been submitted for approval to the OMB under the PRA. The ICR document that the EPA prepared has been assigned EPA ICR number 2759.01. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The EPA is proposing requirements for new, modified, or reconstructed sources as follows: require owners and operators reduce emissions of TOC (minus methane and ethane) from all vent streams of an affected facility (and not allow the alternative of maintaining a TRE index value greater than 1 without the use of a control device); exclude SSM provisions (and instead, the standards apply at all times); revise monitoring requirements for flares; add maintenance vent requirements; revise requirements for adsorber monitoring; exclude the relief valve discharge exemption such that any relief valve discharge to the atmosphere of a vent stream is a violation of the emissions standard; and prohibit an owner or operator from bypassing the control device at any time, and to report any such violation. This information will be collected to assure compliance with the NSPS subpart RRRa.

- Respondents/affected entities: Owners or operators of reactor processes in the SOCMI. Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart RRRa).
- Estimated number of respondents: 6 (assumes 6 new respondents over the next 3 years). Frequency of response: Initially, semiannually, and annually.
- Total estimated burden: average annual recordkeeping and reporting burden is 275 hours (per year) to comply with all of the requirements in the NSPS. Burden is defined at 5 CFR 1320.3(b).
- Total estimated cost: average annual cost is $3,820,000 (per year) which includes $3,800,000 annualized capital and operations and maintenance costs, to comply with all of the requirements in the NSPS.

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 OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than May 25, 2023. The EPA will respond to any ICR-related comments in the final rule.

C. Regulatory Flexibility Act (RFA)

I certify that each of the proposed rules in this 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 action are small businesses. For the proposed amendments to the HON, the Agency has determined that all small entities affected by this action, estimated to be 10, may experience an average impact of costs being less than 0.5 percent of revenues, not including product recovery, or about 0.43 percent, including product recovery from compliance. Two of these ten entities experienced costs above one percent of revenues, neither had costs exceeding three percent of revenues and represent a small total number of impacted entities. For the proposed amendments to P&R I, one small entity is impacted and its impact is costs less than 0.5 percent of revenues. For the proposed amendments to P&R II, no small entities are impacted. Details of the analysis for each proposed rule are presented in the Regulatory Impact Analysis for this action, which is found in the docket.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. None of the facilities that have been identified as being affected by this action are owned or operated by tribal governments or located within tribal lands. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is subject to Executive Order 13045 because it is an economically significant regulatory action under section 3(f)(1) of Executive Order 12866, and the EPA believes that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. Accordingly, we have evaluated the environmental health or safety effects of EtO and chloroprene emissions on children. The results of this evaluation are contained in sections II.E and F, III.A and B, and IV.G of this preamble and further documented in the risk reports, *Residual Risk Assessment for the SOCMI Source Category in Support of the 2023 Risk and Technology Review Proposed Rule* and *Residual Risk Assessment for the Polymers & Resins I Neoprene Production Source Category in Support of the 2023 Risk and Technology Review Proposed Rule,* which are available in the docket.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The EPA expects this proposed action would not reduce crude oil supply, fuel production, coal production, natural gas production, or electricity production. We estimate that this proposed action would have minimal impact on the amount of imports or exports of crude oils, condensates, or other organic liquids used in the energy supply industries. Given the minimal impacts on energy supply, distribution, and use

as a whole nationally, no significant adverse energy effects are expected to occur. For more information on these estimates of energy effects, please refer to the Regulatory Impact Analysis for this proposed rulemaking.

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action involves technical standards. Therefore, the EPA conducted searches for the HON, P&R I, and P&R II through the Enhanced National Standards Systems Network (NSSN) Database managed by the American National Standards Institute (ANSI). We also conducted a review of voluntary consensus standards (VCS) organizations and accessed and searched their databases. We conducted searches for EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3B, 4, 18, 21, 22, 25A, 25D, 26, 26A, 27 of 40 CFR part 60, Appendix A, 301, 305, 316 and 320 of 40 CFR part 63, Appendix A, 624, 625, 1624, and 1625 of 40 CFR part 136 Appendix A, 624.1 of 40 CFR part 163, Appendix A. During the EPA's VCS search, if the title or abstract (if provided) of the VCS described technical sampling and analytical procedures that are similar to the EPA's reference method, the EPA ordered a copy of the standard and reviewed it as a potential equivalent method. We reviewed all potential standards to determine the practicality of the VCS for this rule. This review requires significant method validation data that meet the requirements of EPA Method 301 for accepting alternative methods or scientific, engineering, and policy equivalence to procedures in the EPA reference methods. The EPA may reconsider determinations of impracticality when additional information is available for particular VCS.

No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 21, 22, 25D, 27, 305, 316, 624, 624.1, 625, 1624 and 1625. Three voluntary consensus standards were identified as an acceptable alternative to EPA Methods 3B, 18, and 320 for the purposes of this proposed rule, as follows.

The EPA proposes to use the VCS ANSI/ASME PTC 19–10–1981—Part 10, ''Flue and Exhaust Gas Analyses'' as an acceptable alternative to EPA Method 3B (referenced in NSPS subpart RRR and NESHAP subpart G) for the manual procedures only and not the instrumental procedures. The ANSI/ASME PTC 19–10–1981—Part 10 method incorporates both manual and instrumental methodologies for the determination of oxygen content. The manual method segment of the oxygen determination is performed through the absorption of oxygen. This method is available at the American National Standards Institute (ANSI), 1899 L Street NW, 11th Floor, Washington, DC 20036 and the American Society of Mechanical Engineers (ASME), Three Park Avenue, New York, NY 10016–5990. See *https://wwww.ansi.org* and *https://www.asme.org.* The standard is available to everyone at a cost determined by ANSI/ASME ($96). ANSI/ASME also offer memberships or subscriptions for reduced costs. The cost of obtaining these methods is not a significant financial burden, making the methods reasonably available.

Also, the EPA proposes to use the VCS ASTM D6420–18, ''Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry'' as an acceptable alternative to EPA Method 18 (referenced in NSPS subparts VV, VVa, VVb, III, IIIa, NNN, NNNa, RRR, and RRRa, and NESHAP subparts F, G, H, I, U, and W) with the following caveats. This ASTM procedure has been approved by the EPA as an alternative to EPA Method 18 only when the target compounds are all known and the target compounds are all listed in ASTM D6420 as measurable. We are proposing that ASTM D6420–18 should not be used for methane and ethane because the atomic mass is less than 35; and ASTM D6420 should never be specified as a total VOC method. The ASTM D6420–18 test method employs a direct interface gas chromatograph/mass spectrometer to measure 36 VOC. The test method provides on-site analysis of extracted, unconditioned, and unsaturated (at the instrument) gas samples from stationary sources.

In addition, the EPA proposes to use the VCS ASTM D6348–12e1, ''Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy'' as an acceptable alternative to EPA Method 320 (referenced in NESHAP subparts F, G, and U) with caveats requiring inclusion of selected annexes to the standard as mandatory. ASTM D6348–03(2010) was determined to be equivalent to EPA Method 320 with caveats. ASTM D6348–12e1 is a revised version of ASTM D6348–03(2010) and includes a new section on accepting the results from the direct measurement of a certified spike gas cylinder, but lacks the caveats placed on the ASTM D6348–03(2010) version. The VCS ASTM D6348–12e1 method is an extractive FTIR Spectroscopy-based field test method and is used to quantify gas phase concentrations of multiple target compounds in emission streams from stationary sources. When using ASTM D6348–12e, we are proposing the following conditions must be met: (1) The test plan preparation and implementation in the Annexes to ASTM D 6348–03, Sections A1 through A8 are mandatory; and (2) in ASTM D6348–03 Annex A5 (Analyte Spiking Technique), the percent (%) R must be determined for each target analyte (Equation A5.5). We are proposing that in order for the test data to be acceptable for a compound, %R must be $70\% \geq R \leq 130\%$. If the %R value does not meet this criterion for a target compound, the test data is not acceptable for that compound and the test must be repeated for that analyte (*i.e.,* the sampling and/or analytical procedure should be adjusted before a retest). We are proposing that the %R value for each compound must be reported in the test report, and all field measurements must be corrected with the calculated %R value for that compound by using the following equation:

Reported Results = ((Measured Concentration in Stack))/(%R) × 100.

The two ASTM methods (ASTM D6420–18 and ASTM D6348–12e1) are available at ASTM International, 1850 M Street NW, Suite 1030, Washington, DC 20036. See *https://www.astm.org/.* These standards are available to everyone at a cost determined by the ASTM ($57 and $76, respectively). The ASTM also offers memberships or subscriptions that allow unlimited access to their methods. The cost of obtaining these methods is not a significant financial burden, making the methods reasonably available to stakeholders.

The search identified 13 VCS that were potentially applicable for this rule in lieu of EPA reference methods. After reviewing the available standards, EPA determined that 13 candidate VCS (ASTM D3154–00 (2006), ASTM D3464–96 (2007), ASTM 3796–90 (2004), ISO 10780:1994, ASME B133.9-1994 (2001), ANSI/ASME PTC 19–10–198–Part 10, National Institute of Occupational Safety and Health (NIOSH) Method 2010 ''Amines, Aliphatic'', ASTM D6060–96 (2009), ISO 14965:2000(E), EN 12619 (1999), EN 1911–1,2,3 (1998), ASTM D6735–01 (2009), ASTM D4855–97 (2002)) identified for measuring emissions of pollutants or their surrogates subject to emission standards in the rule would not be practical due to lack of equivalency, documentation, validation

data and other important technical and policy considerations.

Additional information for the VCS search and determinations can be found in the document titled: *Voluntary Consensus Standard Results for National Emission Standards for Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry,* which is available in the docket for this action. The EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable VCS and to explain why such standards should be used in this regulation.

We are also proposing amendments to 40 CFR part 60, subpart A and 40 CFR part 63, subpart A to address incorporations by reference. We are proposing that 40 CFR 60.485(g)(5) and 40 CFR 60.485a(g)(5) be added to 40 CFR 60.17—''Incorporations by Reference'' paragraph (a)(184) since they were mistakenly not added to 40 CFR 60.17 during the last amendment to this rule.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or Indigenous peoples) and low-income populations.

The EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on people of color, low-income people, and/or Indigenous peoples. For the HON, a total of 9.3 million people live within 10 km (~6.2 miles) of the 195 HON facilities that were assessed for risk. The percentages of the population that are African American (25 percent versus 12 percent) and Hispanic or Latino (22 percent versus 19 percent) are higher than the national averages. The proportion of other demographic groups living within 10 km of HON facilities is similar or lower than the national average. For the Neoprene Production source category, a total of 29,000 people live within 5 km of the one neoprene production facility in the country. The percent of the population that is African American (56 percent versus 12 percent) is substantially higher than the national average. The proportion of other demographic groups living within 10 km of HON facilities is similar or lower than the national average. The EPA also conducted a risk assessment of possible cancer risks and other adverse health effects, and found that prior to this proposed regulation, cancer risks were above acceptable levels for a number of areas in which these demographic groups live for the SOCMI and Neoprene Production source categories. See section IV.F for an analysis that characterizes populations living in proximity of facilities and risks prior to the proposed regulation.

The EPA believes that this action is likely to reduce existing disproportionate and adverse effects on people of color, low-income populations and/or Indigenous peoples. This action proposes to establish standards for EtO emission sources at HON processes and chloroprene emission sources at neoprene production processes. This action also proposes amendments to correct and clarify regulatory provisions related to emissions during periods of SSM, including removing general exemptions for periods of SSM and adding work practice standards for periods of SSM where appropriate, address flare combustion efficiency, and require fenceline monitoring for pollutants that drive cancer risks for HON and neoprene production sources. As a result of these proposed changes, we expect zero people to be exposed to risk levels above 100-in-1 million due to emissions from each of these source categories. See sections III.A and B of this preamble for more information about the control requirements of the regulation and the resulting reduction in cancer risks.

The EPA additionally identified and addressed EJ concerns by engaging in outreach activities to communities we expect to be impacted by chemical plants emitting EtO [177] and by requiring the neoprene production facility to take a number of actions to reduce and monitor for fenceline concentrations of chloroprene.[178] The EPA is also proposing that HON and P&R I facilities conduct fenceline monitoring for a number of HAP (*i.e.,* EtO, chloroprene, benzene, 1,3-butadiene, ethylene dichloride and vinyl chloride) and report these data electronically to the EPA so that it can be made public and provide fenceline communities with greater access to information about potential emissions impacts.

The information supporting this Executive Order review is contained in section IV.F of this preamble, as well as in the technical reports, *Analysis of Demographic Factors for Populations Living Near Hazardous Organic NESHAP (HON) Facilities, Analysis of Demographic Factors for Populations Living Near Neoprene Production Facilities,* and *Analysis of Demographic Factors for Populations Living Near Polymers and Resins I and Polymer and Resins II Facilities,* which are available in the docket.

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Michael S. Regan,

Administrator.

[FR Doc. 2023–07188 Filed 4–24–23; 8:45 am]

BILLING CODE 6560–50–P

[177] *https://www.epa.gov/hazardous-air-pollutants-ethylene-oxide/inspector-general-follow-ethylene-oxide-0.*

[178] *https://www.epa.gov/la/laplace-st-john-baptist-parish-louisiana.*

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Wright's Marsh Thistle With a Section 4(d) Rule and Designation of Critical Habitat; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2018–0071; FF09E21000 FXES1111090FEDR234]

RIN 1018–BC34

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Wright's Marsh Thistle With a Section 4(d) Rule and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine threatened species status under the Endangered Species Act of 1973 (Act), as amended, for the Wright's marsh thistle (*Cirsium wrightii*), a thistle species from New Mexico. We also designate critical habitat. In total, approximately 156.8 acres (63.4 hectares) in Chaves, Eddy, Guadalupe, Otero, and Socorro Counties, New Mexico, fall within the boundaries of the critical habitat designation. This rule adds the species to the List of Endangered and Threatened Wildlife. We also finalize a rule under the authority of section 4(d) of the Act that provides measures that are necessary and advisable to provide for the conservation of this species.

DATES: This rule is effective May 25, 2023.

ADDRESSES: This final rule is available on the internet at *http://www.regulations.gov* in Docket No. FWS–R2–ES–2018–0071 and at the New Mexico Ecological Services website at *https://www.fws.gov/office/new-mexico-ecological-services.* Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection in the docket on *http://www.regulations.gov.* For best results, do not copy and paste either number; instead, type the docket number or RIN into the Search box using hyphens. Then, click on the Search button.

For the critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the decision file and are available at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2018–0071.

FOR FURTHER INFORMATION CONTACT: Shawn Sartorius, Field Supervisor, New Mexico Ecological Services Field Office, 2105 Osuna Rd. NE, Albuquerque, NM 87113; telephone 505–346–2525; facsimile 505–346–2542. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if we determine that a species is an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. To the maximum extent prudent and determinable, we must designate critical habitat for any species that we determine to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designation of critical habitat can only be completed by issuing a rule.

What this document does. This rule lists the Wright's marsh thistle (*Cirsium wrightii*) as a threatened species with a 4(d) rule and designates critical habitat for the species under the Endangered Species Act. We are designating critical habitat for the species in 7 units totaling 63.4 hectares (ha) (156.8 acres (ac)) in Chaves, Eddy, Guadalupe, Otero, and Socorro Counties in New Mexico.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that Wright's marsh thistle meets the definition of a threatened species primarily because of the present or threatened destruction, modification, or curtailment of its habitat or range (Factor A), and other natural and manmade factors affecting its continued existence such as changes in water availability, ungulate grazing, and oil and gas development, (Factor E). The existing regulatory mechanisms are inadequate to address the identified threats (Factor D). When listing a species as a threatened species, section 4(d) of the Act allows us to issue regulations that are necessary and advisable for the conservation of the species.

Furthermore, section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrently with listing to the maximum extent prudent and determinable. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

Previous Federal Actions

On September 29, 2020, we proposed to list the Wright's marsh thistle as a threatened species under the Act, with a proposed 4(d) rule and proposed designation of critical habitat (85 FR 61460). Please refer to that proposed rule for a detailed description of previous Federal actions concerning this species.

Summary of Changes From the Proposed Rule

Based on information provided during the comment period by the public, Tribes, States, and peer reviewers, we made the following minor changes to this final rule:

- We updated species occurrence information and incorporated new information related to three previously unknown population locations;
- We excluded approximately 0.88 ha (2.18 ac) of Mescalero Apache land from critical habitat as identified in Table 5, Areas excluded from Critical Habitat Designation by Critical Habitat Unit for Wright's Marsh Thistle; and
- We made several small, non-substantive revisions and corrections throughout the document in response to comments, and per editorial review.

Beyond those changes, this final listing rule, 4(d) rule, and critical habitat designation are unchanged from

what we proposed on September 29, 2020 (85 FR 61460).

Supporting Documents

A species status assessment (SSA) team prepared an SSA report for the Wright's marsh thistle. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought peer review of the SSA report. The Service sent the SSA report to four independent peer reviewers with expertise in Wright's marsh thistle biology, life history, habitat, and range, and in the physical or biological features of its habitat. We received responses from one peer reviewer who provided comments on the SSA report that we integrated into the report, strengthening our analysis. The purpose of peer review is to ensure that our listing determinations, critical habitat designations, and 4(d) rules are based on scientifically sound data, assumptions, and analyses. We also sent the SSA report for review to 2 partners who have knowledge of the species biology and threats.. The SSA report and other materials relating to this rule can be found at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2018–0071.

I. Final Listing Determination

Background

We completed a comprehensive assessment of the biological status of the Wright's marsh thistle and prepared a report of the assessment (SSA report (USFWS 2017, entire)), which provides a thorough account of the species' overall viability and risks to that viability. Please refer to the SSA report as well as the September 29, 2020, proposed rule (85 FR 61460) for a full summary of species information. Both are available at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2018–0071. Below, we summarize the key results and conclusions of the SSA report.

Wright's marsh thistle (Gray 1853, p. 101), a member of the Asteraceae (sunflower) family, produces a 0.9 to 2.4-meter (m) (3- to 8-foot (ft)) single stalk covered with succulent leaves. There are two regional varieties of this species. The more eastern populations in the Pecos River Valley of New Mexico have vivid pink flowers and dark green foliage with taller plant height, while the more western and southern populations in New Mexico (and the previous populations in Arizona and Mexico) have white or pale pink flowers and pale green foliage (Sivinski 2011, pp. 27–28). The differences serve as evidence of ecological adaptability within the species, and we believe these differences represent genetic diversity between the eastern and western populations.

Wright's marsh thistle was historically known to occur in Arizona, New Mexico, and Texas in the United States, and Chihuahua and Sonora in Mexico (Sivinski 2012, p. 2). Wright's marsh thistle has been extirpated from all previously known locations in Arizona, two historical locations in New Mexico, and was thought to be extirpated from all known locations in Texas and Mexico. However, in 2018, a reexamination of Texas herbarium specimens determined that two specimens were collections of Wright's marsh thistle (Nesom 2018, entire), with the most recent collection being from Presidio County, Texas in 2003, and in 2019, a team rediscovered a population of Wright's marsh thistle located on a private property in Chihuahua, Mexico (Sanchez Escalante *et. al.* 2019, p. 9–10). In New Mexico, eight confirmed locations of Wright's marsh thistle cover an area of approximately 43 ha (106 ac): Santa Rosa, in Guadalupe County; Bitter Lake National Wildlife Refuge (NWR), in Chaves County; Blue Spring, in Eddy County; La Luz Canyon, Karr/Haynes Canyon, Silver Springs, and Tularosa Creek, in Otero County; and Alamosa Creek, in Socorro County (Bridge 2001, p. 1; Sivinski and Bleakly 2004, p. 2; NMRPTC 2009, p. 1; Sivinski 1994, p. 1; Sivinski 1996, p. 2; Sivinski 2005, p. 1, 3–5; Sivinski 2009; USFWS 1998, p. 1; Worthington 2002, p. 1–3).

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an endangered species or a threatened species. The Act defines an endangered species as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only

after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as the Service can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent a decision by the Service on whether the species should be listed as an endangered or threatened species under the Act. It does, however, provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at FWS–R2–ES–2018–0071 on *http://www.regulations.gov.*

To assess Wright's marsh thistle viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability. To assess Wright's marsh thistle viability and the risks to that viability, we reviewed the biological condition of the species and its resources, and the threats that influence the species' current and future condition. Wright's marsh thistle is a rare wetland species that grows in marshy habitats with year-round, water-saturated soils, at elevations between 3,450 and 7,850 feet (ft.) (1,150 and 2,390 meters (m)) in elevation (Sivinski 1996, p. 1; 2005a, pp. 3–4). It is usually associated with alkaline springs and seeps ranging from low desert up to ponderosa pine forest (Sivinski 2005a, p. 3). Wright's marsh thistle is an obligate of seeps, springs, and wetlands that have saturated soils with surface or subsurface water flow (Sivinski 1996a; Service 1998; Worthington 2002a, p. 2; NMRPTC 2009). Common associates include bulrush (*Scirpus* spp.), beaked spikerush (*Eleocharis rostellata*), Pecos sunflower (*Helianthus paradoxus*), rush (*Juncus* spp.), and cattail (*Typha* spp.) (Sivinski 1996a, pp. 2–5; Sivinski and Bleakly 2004, p. 2; Worthington 2002a, pp. 1–2).

Most of the areas occupied by Wright's marsh thistle are open cienéga or boggy margins of open water or along excavated drains. A few Wright's marsh thistle occur in cattail stands, and many occur in fairly open stands of common reed (*Phragmites australis*). Surprisingly, several hundred Wright's marsh thistle rosettes were found well within some very dense, tall stands of common reed in 2012 (Sivinski 2012, p. 33). Almost all of these were juvenile rosettes, and it appears that maturation and flowering is suppressed by the shade in dense patches of common reed (Sivinski 2012, p. 33). Therefore, we infer that rosettes can survive without as much direct sunlight as mature plants.

Sufficient pollinators are needed to complete cross pollination of plants both within patches at each population and between subpopulations in the Santa Rosa population. Many generalist pollinators may visit Wright's marsh thistle (Sivinski 2017, pers. comm.). The most common pollinators of Wright's marsh thistle are bees, especially bumble bees (*Bombus* spp.) (Sivinski 2017, pers. comm.). Bumble bees are strong fliers and may travel 1 mi (1.5 km) or more to patches of Wright's marsh thistle (Osborne *et al.* 2008), and thus could provide cross pollination and gene flow within the Santa Rosa population. Thus, depending on life stage, Wright's marsh thistle needs to have permanent root saturation; alkaline soils; full, direct, or nearly full sunlight; and abundant pollinators, including bumble bees.

For Wright's marsh thistle to maintain viability, its populations or some portion thereof must be able to withstand stochastic disturbance. Resource needs that influence the resiliency of populations include constant soil saturation, alkaline soils, abundance of insect pollinators, and availability of direct sunlight. Additionally, secondary resource needs include agents of seed dispersal (wind, water, mammals, and birds) and water availability for seed germination. For more details on these resource needs and their impact on species viability, refer to chapter 2 of the SSA report (USFWS 2017, pp. 3–13). Factors that influence those resource needs will determine whether Wright's marsh

thistle populations are able to sustain adequate numbers within habitat patches of adequate area and quality to maintain survival and reproduction in spite of disturbance, thereby increasing the resiliency of populations.

Maintaining representation in the form of genetic or environmental diversity is important to maintain Wright's marsh thistle's capacity to adapt to future environmental changes. A healthy community of insect pollinators, particularly bees and butterflies, leads to genetic diversity by the process of cross pollination between patches within a population. The differences in flower color (and perhaps differences in mature plant maximum growth height) represent variation in ecological adaptability between the eastern and western populations of the thistle, and possibly also a form of genetic diversity. There is a need to maintain the genetic and environmental diversity between the eastern and western groups, as their potential genetic and life-history attributes may buffer the thistle's response to environmental changes over time. However, Wright's marsh thistle has likely lost genetic and environmental diversity as populations have been reduced or extirpated, and therefore maintaining the remaining representation in the form of genetic and environmental diversity may be important to the capacity of Wright's marsh thistle to adapt to future environmental change.

Wright's marsh thistle needs to have multiple resilient populations distributed throughout its range to provide for redundancy. The more populations, and the wider the distribution of those populations, the more redundancy the species will exhibit. In addition, populations of the species can exhibit internal redundancy through the presence of multiple patches within the population. For example, the eastern populations of Wright's marsh thistle have multiple patches of occupied habitat within each population location, while the western populations typically have only one patch within each population location. The presence of multiple patches contributes to the ability of the population to maintain resiliency when faced with various risk factors. Redundancy reduces the risk that a large portion of the species' range will be negatively affected by a catastrophic natural or anthropogenic event at a given point in time. Species that are well-distributed across their historical range are considered less susceptible to extinction and have higher viability than species confined to a small portion of their range (Carroll *et al.* 2010, entire; Redford *et al.* 2011, entire).

Influence Factors for Wright's Marsh Thistle

The largest threats to the future viability of Wright's marsh thistle relate to habitat degradation from various stressors influencing the availability of the thistle's resource needs (*e.g.,* water availability). A brief summary of these primary stressors is presented below, followed by a table identifying the particular stressors, and the magnitude of those stressors, affecting each of the eight populations (see Table 1, below). We also include a discussion of current conservation measures for the thistle and any existing regulatory mechanisms that may ameliorate or reduce the impact of the stressors. For a full description of these stressors, refer to chapter 4 of the SSA report (USFWS 2017, pp. 39–56).

Decreased Water Availability

The drying of Wright's marsh thistle habitat over approximately the last 25 years has led to shrinking population boundaries, a reduction in the numbers of plants, and, in some cases, a loss of all individuals at several localities (Sivinski 1996, pp. 4–5; Sivinski 2005, pp. 3–4; Sivinski 2012, pp. 29–33). Because the thistle occurs only in areas that are water-saturated, populations have a high potential for extirpation when the habitat dries up. Loss of water from Wright's marsh thistle habitat occurs through changing precipitation patterns or drought, or as a result of human impacts from groundwater pumping (withdrawal) or diversion of surface water (which can lead to the degradation and extirpation of the species' habitat) (Sivinski 1996, p. 5; Sivinski 2005, p. 1; USFS 2008, p. 19). Drought, along with ground and surface water depletion, serves to decrease the amount of water available in Wright's marsh thistle habitat, which impacts the species' need for permanent root saturation. Reductions in precipitation and temperature are predicted to continue in the future, increasing these impacts to Wright's marsh thistle (NOAA 2014, unpaginated). In addition to experiencing periods of drought, much of the habitat of Wright's marsh thistle has been, and continues to be, severely altered and degraded due to past and present land and water management practices that deplete ground and surface water. For specific examples for each population, please refer to chapter 4, section 1 of the SSA report (USFWS 2017, pp. 39–56). All of the extant localities may be affected by long-term drought, whereas four of the largest localities at Blue Spring, Bitter Lake National Wildlife Refuge (NWR), Santa Rosa, and Alamosa Creek have the potential to be further modified by ongoing and future water management practices.

Drought—According to the United States Drought Monitor (U.S. Drought Monitor 2017), large portions (over 30 percent) of New Mexico, including Wright's marsh thistle habitat, experienced drought from approximately April 2011 until mid-2014. Within New Mexico, monsoonal summer precipitation can be very patchy, with some areas receiving considerably less rainfall than others. The three eastern populations of Wright's marsh thistle in the Pecos River valley have not been affected by drought to the same extent as the western populations, because the Pecos River valley's marshy habitats are maintained by large regional aquifers. The western populations often rely on wet periods during summer months to recharge the ground water. In the Sacramento Mountains, these wet periods are extremely rare events (Newton *et al.* 2012, p. 66), and drought has notably impacted the area's groundwater tables (USFS 2008, p. 22). The seasonal distribution of yearly precipitation in this mountain range can result in temporary drought conditions and reduced water availability for some of the area's Wright's marsh thistle localities.

Wright's marsh thistle is vulnerable to reduced water availability because the species occupies relatively small areas of spring or seep habitat in an arid region that is plagued by drought and ongoing aquifer withdrawals (*e.g.,* in the Roswell Basin). If future episodes of drought increase in frequency, duration, or intensity, additional dewatering and decrease of the thistle's habitat are likely to occur. Projected increases in temperature and increased variability in precipitation in locations where Wright's marsh thistle is currently located demonstrate the vulnerability of the habitat to reductions in water availability. The vulnerability of the habitat to increased drought depends, in large part, on the sources of their water supply. Habitats that are sustained mainly by precipitation in the Sacramento Mountains (five populations) are the most likely to be affected by increased drought, a significant stressor to these populations. Alternatively, localities that are supplied primarily by groundwater in the Pecos River Basin (three populations) will likely have the greatest resistance to increased drought due to water stored in aquifers, making

drought a less significant stressor to the populations (*e.g.,* see Poff *et al.* 2002, pp. 18–19).

Ground and Surface Water Depletion—Wright's marsh thistle is a wetland plant that can be extirpated when its habitat dries out. The effects of ongoing and past maintenance and operation of existing water diversions can also limit the size of thistle populations (USACE 2007, p. 29). Loss and degradation of habitat from water diversion or draining of wetlands that historically supported Wright's marsh thistle has been reported in Chaves, Otero, and Sierra Counties, New Mexico (Sivinski 1994, pp. 1–2; 1996, p. 4; 2005, p. 1; 2006, p. 4). The extent of ongoing and future water diversions is related to the extent of urban and agricultural development within a given area. The significance of the impacts of this stressor to each population can be correlated to the number of water diversions within the area for both urban and agricultural purposes. Specific details on impacts to each population can be found in chapter 4 of the SSA report (USFWS 2017, pp. 39–56). The alteration and loss of Wright's marsh thistle habitat from groundwater and surface water depletion will continue and likely increase in the foreseeable future. This projection is based on current and future development plans in areas surrounding each population; specific details are located in chapter 4 of the SSA report (USFWS 2017, pp. 39–56).

Effects of Climate Change—Because Wright's marsh thistle occupies relatively small areas of spring or seep habitat in an arid region plagued by drought and ongoing aquifer withdrawals (*e.g.,* in the Roswell Basin), it is expected to be vulnerable to changes in climate that decrease the availability of water to suitable habitat. Population sizes have decreased in springs and wet valleys affected by drought in at least three canyons of the Sacramento Mountains, New Mexico. Similar water loss may affect other Wright's marsh thistle localities (USFWS 2017, p. 45). If changes in climate lead to future drought, additional dewatering and reduction of habitat for the thistle may occur.

We obtained downscaled climate projections (as of 2018) for our analysis of Wright's marsh thistle from the Climate Explorer program in the U.S. Climate Resilience Toolkit (NOAA 2014, unpaginated). The Climate Explorer is based on 32 models and produces a mean that can be used to predict changes in air temperature and precipitation for counties, cities, or specific zip codes in the contiguous United States and portions of Canada and Mexico. Scenario representative concentration pathway (RCP) 4.5 is a moderate emissions scenario for atmospheric concentrations of greenhouse gases. Based on climate change projections for emissions at RCP 4.5, all current locations of Wright's marsh thistle show increases in mean daily maximum temperature over the next 50 years by approximately 1.7 degrees Celsius (°C) (3 degrees Fahrenheit (°F)). For example, in Chaves County, New Mexico, mean daily maximum temperature is expected to rise from approximately 24.7 °C (76.5 °F) in 2010, to approximately 26.9 °C (80.5 °F) in 2060. Climate change scenario RCP 8.5 projects climate conditions based on higher carbon dioxide (CO_2) emissions. This scenario results in a projected change of approximately 3 °C (5.5 °F) over the next 50 years in Chaves County, New Mexico, leading to a mean daily maximum of 28.2 °C (82.7 °F).

While mean daily precipitation is not expected to vary drastically over the next 50 years, the variability in precipitation throughout the year will increase. For example, in Otero County, mean daily average precipitation is projected to decrease during certain times of the year and increase during other times of the year relative to current conditions. In addition, the timing of maximum precipitation events may occur during different months than experienced in the past. This variability in precipitation will contribute to more periods of extreme drought and severe flooding events, potentially impacting the availability of water during times critical to the life-history processes of Wright's marsh thistle (NOAA 2014, unpaginated).

Specific details on the effects of climate change are located in chapter 4 of the SSA report (USFWS 2017, pp. 39–56). Projected increases in temperature and increased variability in precipitation at locations where Wright's marsh thistle is currently located demonstrate the vulnerability of the species' habitat to changes in climate that will exacerbate the impact of existing stressors relating to water availability and withdrawals.

Summary of Decreased Water Availability—In summary, ground and surface water withdrawal and potential future increases in the frequency, duration, or intensity of drought, individually and in combination, pose a threat to Wright's marsh thistle and its habitat in the future. In addition, as Wright's marsh thistle has small, isolated populations, we expect the stressor of decreased water availability to further impact the species' overall viability. Thus, we expect that this threat will likely remain a significant stressor to the thistle and will likely intensify in the foreseeable future.

Livestock Grazing

In the semi-arid southwestern United States, wet marshes and other types of Wright's marsh thistle habitat attract ungulates (*e.g.,* livestock, elk, and deer) because of the availability of water and high-quality forage (Hendrickson and Minckley 1984, p. 134). Livestock grazing occurs at Wright's marsh thistle localities in the Sacramento Mountains, Santa Rosa, Blue Springs, and Alamosa Springs. At the Santa Rosa locality, photographs indicate that the growth of Wright's marsh thistle and the integrity of its habitat have been negatively affected by livestock herbivory and trampling (Sivinski 2012, pp. 33–53). Dry periods likely increase the effects of livestock trampling and herbivory on Wright's marsh thistle when other water and forage plants are not available (see 75 FR 67925; November 4, 2010). Grazing may be more concentrated within habitats similar to those occupied by Wright's marsh thistle during drought years, when livestock are prone to congregate in wetland habitats or where forage production is greater than in adjacent dry uplands (USFS 2003, entire).

Livestock may trample individual plants and eat the thistle when other green forage is scarce, and when the seedlings or rosettes are developing and abundant. Further, livestock may eat mature plant inflorescences (the complete flower head), which could reduce seed production. For example, the federally threatened Sacramento Mountains thistle (*Cirsium vinaceum*), which is also found in New Mexico and is associated with habitats similar to those occupied by Wright's marsh thistle (52 FR 22933; June 16, 1987), is eaten by livestock and appears to be the preferred forage at some times of the year. It may provide some of the only green forage during droughts (NMRPTC 2009, p. 2). Also, it is possible that livestock grazing within and adjacent to spring ecosystems could alter or remove habitat or limit the distribution of the thistle (USFWS 2017, pp. 49–50).

The effects of grazing on Wright's marsh thistle depend on timing. Winter grazing (after seed dispersal and before seedling growth in spring) probably has a low effect on survival and reproduction, although there could be some trampling of rosettes, while spring and early summer grazing probably reduces growth, survival, and reproduction. Late summer and early

fall grazing are most severe, as flowering plants typically set seed at this time; grazing during this period would inhibit reproduction. Finally, if a patch of Wright's marsh thistle was heavily grazed during the time of bolting or flowering over 2 or more consecutive years, the seed bank and long-term population trend in the affected patch could be negatively impacted. For example, observations of the impacts of grazing at some of the Wright's marsh thistle localities show that fewer thistles mature into flowering adults when the population experiences grazing pressure (Sivinski 2012, pp. 33–53). Livestock activities are considered a widespread stressor at the current time; localized impacts have been observed, and there is a high potential for negative effects to populations of Wright's marsh thistle. Increased use of wet springs and marshes by livestock during drought conditions constitutes a significant stressor to the thistle in the future.

In summary, we find that livestock grazing poses a current and future threat to Wright's marsh thistle and its habitat through direct mortality and habitat degradation, and we expect that this threat will likely intensify at some localities (Sacramento Mountains, Santa Rosa, Blue Spring, Alamosa Springs) due to projected increases in drought periods that cause livestock to concentrate around Wright's marsh thistle localities. Because the thistle only occurs in small, isolated populations, the impacts of grazing could be a significant stressor to the species.

Native and Nonnative Plants

Some native and nonnative plants pose a threat to Wright's marsh thistle and its habitat through habitat encroachment and competition for resources at most localities. The native plants include cattails (*Typha* spp.); nonnative species include the common reed (*Phragmites australis*), purple loosestrife (*Lythrum salicaria*), Russian olive (*Elaeagnus angustifolia*), saltcedar (*Tamarix* spp.), and Russian thistle (*Salsola* spp.) (Sivinski 1996, p. 6).

These particular native and nonnative species all have the same effect on Wright's marsh thistle by functioning as invasive species with respect to the thistle's habitat. Although cattails and Wright's marsh thistle may have evolved in the same area, decreased water availability has altered habitat conditions such that cattails have a competitive advantage in Wright's marsh thistle habitat. These plants present unique challenges and potential threats to the habitat, including shade effects on Wright's marsh thistle seedlings and rosettes.

The common reed, a nonnative, invasive plant introduced from Europe and Asia, increases the potential for wildfire and is increasing in density at some locations in New Mexico. The increased occurrence of the common reed in Wright's marsh thistle habitat is a current threat to the species due to increased wildfire risk, competition, and changes in hydrology (impacts on degree of soil saturation). The impact that common reed causes as compared to other nonnative plant species, especially when habitat is disturbed through burning or drying is greater than other invasive species. The dense plant growth of the common reed blocks sunlight to other plants growing in the immediate area and occupies all available habitat (PCA 2005, p. 1). The impacts from common reed vary based on location, with the greatest impacts occurring at Santa Rosa, Bitter Lake NWR, Blue Spring, and Tularosa Creek. We expect that the threats caused by native and nonnative plant competition and habitat loss will likely continue and possibly intensify, due to lack of vegetation management at several locations (Santa Rosa, Blue Spring, Tularosa Creek) and the pervasiveness of native and nonnative plants despite ongoing efforts for habitat restoration at other locations (Bitter Lake NWR). Because Wright's marsh thistle populations are relatively small and isolated, the impacts of native and nonnative plants could pose a significant stressor to the thistle despite ongoing efforts for habitat restoration at other locations (Bitter Lake NWR). Because Wright's marsh thistle populations are relatively small and isolated, the impacts of native and nonnative plants could pose a significant stressor to the thistle.

Attempts to manage native and nonnative plants through herbicide use and mowing may also exacerbate negative effects to Wright's marsh thistle, as these techniques are difficult to preferentially apply to only the native and nonnative plant species when habitat is shared. In addition, we expect increases in drought periods to exacerbate the negative effects of this stressor.

Oil and Gas Development and Mining

Oil and gas development occur within and adjacent to (*i.e.,* within 10 miles) some areas occupied by Wright's marsh thistle, including Santa Rosa, Bitter Lake NWR, and Blue Spring (New Mexico State Lands Office 2017, unpaginated; NMDGF 2007, pp. 18–19; NMDGF 2005, p. 35). There are also mining activities adjacent to (*i.e.,* within 5 miles) other occupied areas such as a potential beryllium mine at Alamosa Springs, and subsurface drilling and exploration of the mineral bertrandite on Sullivan Ranch near Alamosa Springs (New Mexico Mining and Minerals Division 2010, unpaginated; New Mexico State Lands Office 2017, unpaginated; Sivinski 2012, p. 9). As of July 8, 2021, the Service has no information on any new actions towards developing the potential beryllium mine at Alamosa Springs. The main impacts from oil and gas development and mining include the potential for water quality contamination.

Contamination from oil and gas development has been observed within close proximity (*i.e.,* within 16 kilometers (km) (10 miles (mi)) of some Wright's marsh thistle localities (New Mexico State Lands Office 2017, unpaginated). While laws and regulations related to water quality have reduced the risk of contamination in and near occupied locations from oil and gas production, a spill that could impact these habitats is still likely based on the high volume of oil and gas leases near the locations.

Potential contamination from both oil and gas development and mining could have several impacts on plants (such as Wright's marsh thistle), including the following: Increased available nutrients, which may favor competitive or nonnative plant growth; altered soil pH (either higher or lower), which can kill plants; absorption of chemicals, which can poison plants or cause poor growth or dead spots on leaves; and plant mortality. In addition, oil and other contaminants from development and drilling activities throughout these areas could enter the aquifer supplying the springs and seeps inhabited by Wright's marsh thistle when the limestone layers are pierced by drilling activities. An accidental oil spill or groundwater contamination has the potential to pollute water sources that support Wright's marsh thistle, while mining activities could alter or destroy habitat.

The largest habitat area occupied by Wright's marsh thistle is less than 16 (ha) (40 ac), and more than half the known populations are less than 2 ha (5 ac) in size. Even a small, localized spill has the potential to contaminate and destroy a population. The loss of even one of the eight populations would result in loss of representation and redundancy to the species as a whole. Because this species is comprised of small, isolated populations, these stressors could potentially negatively affect the thistle, but it is unclear whether these impacts would be

localized or widespread stressors, as the interaction between contaminant spills and groundwater and surface water hydrology is poorly understood. Therefore, we have determined that oil and gas development and mining functions as a stressor to the future viability of the species via impacts to water sources that provide habitat for Wright's marsh thistle.

TABLE 1—STRESSORS IMPACTING EACH OF THE EIGHT POPULATIONS OF WRIGHT'S MARSH THISTLE

[USFWS 2017, pp. 39–56]

Population	Stressors to population					
	Decreased water availability			Livestock grazing	Native and nonnative plants	Oil and gas development
	Drought	Groundwater and surface water depletion	Effects of climate change			
Eastern Populations						
Santa Rosa Basin	XX	XX	XX	XXX	XX	X
Bitter Lake NWR	XX	XX	XX	.....	XX	XX
Blue Spring	XX	XXX	XX	XX	X	XX
Western Populations						
Alamosa Springs	XXX	XX	XX	X	.....	X
Tularosa Creek	XXX	XX	XX	.....	X	.....
Silver Springs	XXX	XXX	XX	X	.....	.....
La Luz Canyon	XXX	XXX	XX	X	.....	.....
Karr/Haynes Canyon	XXX	XXX	XX	X	X	.....

Note: XXX indicates a significant stressor to the population, XX indicates a moderate stressor to the population, and X indicates a mild stressor to the population.

Conservation Measures and Regulatory Mechanisms

Minimal conservation of Wright's marsh thistle is occurring at the Federal level. The Bitter Lake NWR manages invasive reeds in their moist soil/wetland units where the species is located. This management helps increase sunlight availability and decrease competition with nonnative species. Bitter Lake NWR also recently received a grant to complete seed collection efforts for Wright's marsh thistle. The Lincoln National Forest does not have active conservation for the thistle but implements a 61-meter (m) (200-foot (ft)) buffer around occupied sites when projects occur within or near occupied areas.

At the State level, Wright's marsh thistle is listed as endangered, under the authority of the New Mexico Statutes Annotated 1978, at title 19 of the New Mexico Administrative Code at chapter 21, part 2, section 9 (19 NMAC 21.2.9). The provisions in New Mexico State law prohibit the taking of endangered plants on all lands of New Mexico (except Tribal lands), except under valid permit issued by the State, and encourage conservation by State government agencies. In this instance, ''taking'' means the removal, with the intent to possess, transport, export, sell, or offer for sale. Furthermore, if Wright's marsh thistle is listed under the Act, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of listed species. Funds for these activities could be made available under section 6 of the Act (Cooperation with States). Thus, the Federal protection afforded to this plant by listing it as a threatened species will be reinforced and supplemented by protection under State law. In addition to the State endangered listing for Wright's marsh thistle, some protection is offered to the species through title 19 of the New Mexico Administrative Code at chapter 15, part 2 (19 NMAC 15.2), which outlines general environmental provisions for water and wildlife relating to oil and gas operations, including information on methods to reduce risk of contamination to the surrounding habitat. While 19 NMAC 15.2 reduces the risks associated with oil and gas production to nearby occupied locations of the thistle, the high volume of oil and gas leases near these sites means the risk of impacts from a spill still persist.

Current Condition of Wright's Marsh Thistle

To determine the species' current condition, we ranked each population based on six factors relating to population and habitat variables: habitat quantity, number of patches, abundance, reproduction, permanent root saturation, and full sun. For each of these six factors, we defined criteria for low, moderate, and high conditions, which are outlined in table 3.3 in chapter 3 of the SSA report (USFWS 2017 pp. 35–36). These criteria were used to determine an overall condition for each of the eight extant populations for which we had sufficient information. Three additional populations of Wright's marsh thistle were identified during the public comment period; however, due to insufficient information associated with these three populations, we were unable to determine an overall condition. The overall condition of a population refers to the estimated likelihood of persistence over time.

We define a population in high overall condition to have a greater than 90 percent likelihood of persistence over the next 25 years (in other words, a 10 percent or less likelihood of extirpation). For a population in moderate condition, we estimate that the likelihood of persistence over the next 25 years would be approximately 66 to 90 percent (10 to 33 percent likelihood of extirpation). For a population in low condition, we estimated a likelihood of persistence of approximately 25 to 66 percent over the next 25 years (33 to 75 percent likelihood of extirpation), and a population in very low condition to have a likelihood of persistence of approximately 0 to 25 percent over the

next 25 years (75 to 100 percent likelihood of extirpation).

The best available information indicates that Wright's marsh thistle is currently found at eight localities in New Mexico, as well as three new potential localities (one in New Mexico, one in Texas, and one in Mexico). We have very little information on these new localities, as further explained under Summary of Comments and Recommendations below; as a result, one potential new locality in New Mexico (associated with a Natural Resources Conservation Service conservation easement) and the other two potential localities in Texas and Mexico did not weigh heavily into our analysis of the status of the species because their presence has not been verified in terms of populations size and habitat. We concluded that the plant has been extirpated in Arizona and two locations in New Mexico. According to our current condition rankings outlined in chapter 3 of the SSA report (USFWS 2017, pp. 14–38), three of the eight extant populations in New Mexico were determined to have moderate resiliency, two have low resiliency, and three have very low resiliency and are at risk of extirpation. Across its range, the thistle demonstrates genetic and environmental diversity (representation) resulting in two distinct phenotypes in the eastern and western populations, as described above. Within the two representation areas (east and west), three populations are extant in the east, and five populations are extant in the west. While there is greater redundancy in terms of number of populations in the western phenotype, the five extant populations in the western representation area are much smaller in both the area occupied and population size. Therefore, the western populations are less resilient. This circumstance impacts the overall viability of the species by reducing the overall resiliency of the thistle to stochastic events.

Future Scenarios Considered

As there are a range of possibilities regarding the intensity of stressors acting on the populations (*i.e.,* decreased water availability to habitat, ungulate grazing, native and nonnative plants, oil and gas development, and mining), we forecast Wright's marsh thistle's resiliency, representation, and redundancy under four plausible scenarios in the SSA report. For these scenarios, we considered four different trajectories for all threats acting on the species (*i.e.,* all threats increasing at two different rates, decreasing, or remaining at the current level). We did not look at interactions between threats (*i.e.,* one threat increasing with another threat decreasing), as data were not sufficient for this type of analysis, but we did combine the various threat ratings to provide an overall population condition rating using professional judgment. These four scenarios incorporate the best available information on projection of threat data up to 50 years in the future. Sources of data include, but are not limited to, development (urban, agricultural, oil and gas and mining) plans for various areas and climate change models. For example, we referenced the City of Alamogordo's 50-year development plan for projections of future water withdrawals. With regard to climate change models, we used a high to low emissions climate change scenarios from the 2017 U.S. Climate Resilience Toolkit, which provides a range of projections for temperature and precipitation through 2100 (NOAA 2014, unpaginated). While the U.S. Climate Resilience Toolkit (which was accessed in 2017) used older data, current IPCC reports project similar trends to the climate models that we used in the SSA report (IPCC 2021, p. 14). We also used the U.S. Geological Survey's Monthly Water Balance Model Futures Portal that provides projections out to the year 2095 for changes in evapotranspiration (USGS 2017, entire).

Some, but not all, of the threats could be projected beyond 50 years into the future. We can project availability of water resources and effects from climate change (temperature and reduced precipitation) beyond 50 years into the future. However, given our knowledge of the species, their response to known threats, and the future trends of these threats, we determined that 50 years was an appropriate timeframe for our analysis. Our future scenarios were based on the aggregation of all the threats considered, rather than individual threats. Therefore, to develop our future scenarios, we only used projection information up to 50 years into the future, the timeframe that includes projections for all future threats and for which we could predict the expected future resiliency and overall condition for each population based on our knowledge of the species' expected response to identified threats.

First, the ''Continuing Current Conditions'' scenario projects the condition of Wright's marsh thistle populations if the current risks to population viability continue with the same trajectory as experienced currently. Decreased water availability continues to impact the populations via continuing levels of drought, along with ground and surface water depletion. Grazing continues where it has been occurring, and the impacts will accumulate. Competition from native and nonnative plants continues, along with any current impacts from oil and gas development. For this scenario, we used the mean level of projected values in temperature (an increase in mean daily maximum temperature of approximately 0.83 °C (1.5 °F) over 50 years).

Second, the ''Optimistic'' scenario projects the condition of Wright's marsh thistle populations if conservation measures are put in place to limit the impacts of current risks to population viability, including conservation efforts to address decreased water availability, livestock grazing, and competition with native and nonnative plants. For this scenario, we used the low level of projected values in temperature (an increase in mean daily maximum temperature of approximately 0.56 °C (1.0 °F) over 50 years and increases in mean monthly potential evapotranspiration of 0 to 10 millimeters (mm) (0 to 0.4 inches (in)) over 50 years), leading to less severe effects of drought on the riparian ecosystems of which Wright's marsh thistle is a part.

Third, the ''Major Effects'' scenario projects the condition of Wright's marsh thistle if stressors on the populations are increased. We expect a decrease in water availability, along with increased negative impacts from grazing, native and nonnative plants, oil and gas development, and mining. For this scenario, we used the moderate level of projected values in temperature (an increase in mean daily maximum temperature of approximately 1.7 °C (3.0 °F) over 50 years, and increases in mean monthly potential evapotranspiration of 10 to 30 mm (0.4 to 1.2 in) over 50 years), with increased impacts of drought.

Finally, the ''Severe Effects'' scenario projects the condition of Wright's marsh thistle populations under the assumption that stressors on the populations are highly increased. Compared to the ''Major Effects'' scenario, we expect a further decrease in water availability, along with further increased negative impacts from ungulate grazing, native and nonnative plants, oil and gas development, and mining. For this scenario, we used the high level of projected values in temperature (an increase in mean daily maximum temperature of approximately 2.8 °C (5.0 °F) over 50 years and increases in mean monthly potential evapotranspiration of 30 to 80 mm (1.2 to 3.1 in) over 50 years) with increased impacts of drought.

Thus, we considered the range of potential likely scenarios that represent different possibilities for how the stressors outlined above may influence the future condition of the species. The results of this analysis for each scenario are presented below in Table 2. For specific details on how each scenario impacted the six factors (habitat quantity, number of patches, abundance, reproduction, permanent root saturation, and full sun) contributing to overall condition of each population, refer to chapter 5 of the SSA report (USFWS 2017, pp. 57–100).

TABLE 2—CONDITION RATINGS FOR EACH OF THE EIGHT POPULATIONS OF WRIGHT'S MARSH THISTLE UNDER FOUR POSSIBLE FUTURE SCENARIOS

[USFWS 2017, pp. 57–100]

Population	Current condition	Scenario 1: continuing current conditions	Scenario 2: optimistic	Scenario 3: major effects	Scenario 4: severe effects
Eastern Populations					
Santa Rosa Basin	Moderate	Moderate	High	Moderate	Low.
Bitter Lake NWR	Moderate	Moderate	High	Moderate	Low.
Blue Spring	Moderate	Low	Moderate	Low	Low.
Western Populations					
Alamosa Springs	Low	Low	Low	Very Low	Extirpated.
Tularosa Creek	Very Low	Extirpated	Very Low	Extirpated	Extirpated.
Silver Springs	Very Low	Very Low	Very Low	Extirpated	Extirpated.
La Luz Canyon	Very Low	Very Low	Very Low	Extirpated	Extirpated.
Karr/Haynes Canyon	Low	Low	Low	Low	Extirpated.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. Our assessment of the current and future conditions encompasses and incorporates the threats individually and cumulatively. Our current and future condition assessment is iterative because it accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Summary of Comments and Recommendations

As discussed in the Supporting Documents, above, we received comments on the SSA report from one peer reviewer. We reviewed all comments we received from the peer reviewer for substantive issues and new information regarding Wright's marsh thistle and its critical habitat. The peer reviewer suggested we expand our descriptions of how condition scenarios were developed and how threats were assessed against the population (*e.g.,* at an individual population level or based on the eastern and western portions of the populations). We addressed their comments by providing clarifying information on how each condition scenario was developed and how threats were assessed at the population and range wide scales. The peer reviewer also provided additional information and clarification on the species biology and life history. Peer reviewer comments were incorporated into the final SSA report making our scenario descriptions, analysis, and conclusions stronger.

We requested written comments from the public on the September 29, 2020, proposed rule (85 FR 61460) during a 60-day comment period that closed on November 30, 2020. We contacted appropriate Federal, State, and Tribal agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. We did not receive any requests for a public hearing. Our summary responses to the substantive comments we received on the September 29, 2020, proposed rule, are provided below. Comments simply providing support for, or opposition to, the proposed rule without any supporting information were not considered to be substantive and we do not provide a response. All substantive information provided during the comment period has either been incorporated directly into this final determination or is addressed below.

Comments From States

(1) *Comment:* Two States, New Mexico and Texas, commented that Wright's marsh thistle was collected in Presidio County, Texas, in 2003 and verified in 2018 (Nesom 2018, entire) and historically occurred in Pecos County, Texas. Per the comments, the Presidio County specimen was originally misidentified as a more common species, and upon reexamination the specimen was determined to be Wright's marsh thistle Similarly, the Pecos County, Texas, specimen was collected in 1849 and misidentified at the time of collection. Reexamination resulted in the specimen being identified as Wright's marsh thistle based on the same diagnostic morphology as the Presidio County specimen. Botanists from New Mexico and Texas agree with these determinations for both specimens.

Our Response: We updated the final rule to reflect the identification of these two specimens from Texas, as they contribute to the historical and current distribution of Wright's marsh thistle.

(2) *Comment:* The State of Texas commented that the population in Presidio County, which we were not aware of at the time of proposed listing and thus was not included in our proposed critical habitat designation, should not be included in the final critical habitat designation, because they claimed the population is rare but protected from threats, and critical habitat designation could impede voluntary conservation efforts.

Our Response: We did not include this site as critical habitat for Wright's marsh thistle because we could not determine that this site meet the definition of critical habitat. While this location is not a new site (an herbarium specimen was collected in 2003), we were unaware that Wright's marsh thistle had been found in Presidio County, Texas, until we received this information about the rediscovery of the herbarium specimen and the diagnostic analysis conducted. Based on our review of the information provided, we incorporated the additional occurrence information for Presidio County, Texas, into this final rule. We were unable to verify the species information provided by the commenter or assess the location against the criteria established for designating critical habitat. Therefore, this location is not included within our final critical habitat designation.

(3) *Comment:* The State of New Mexico commented that a population at Rattlesnake Springs at Carlsbad Caverns National Monument previously identified as a possible hybrid population was surveyed in 2012. No Wright's marsh thistle plants were found at the site; only Texas thistle (*Cirsium texanum*).

Our Response: The SSA report for Wright's marsh thistle noted that the population at Rattlesnake Springs at Carlsbad Caverns was a hybrid between Wright's marsh thistle and Texas thistle (USFWS 2017, p. 14). The commenter did not provide us with any additional information such as an official report, note, photograph, or herbarium documentation that re-identifies this population as Texas thistle.

(4) *Comment:* The State of New Mexico noted that Wright's marsh thistle was rediscovered in Mexico in 2018 in one of five locations surveyed (Sanchez-Escalante *et.al.* 2019, pp. 7–10).

Our Response: The September 29, 2020, proposed rule (85 FR 61460) used the best available data regarding Wright's marsh thistle distribution and abundance, including the known historical and current population locations available to us during the development of the proposed rule. Based on this new information regarding rediscovery of the species in Mexico, we updated this final rule to reflect the identification of this location from Mexico, as it contributes to the historical and current distribution of Wright's marsh thistle.

(5) *Comment:* The State of New Mexico stated that the proposed critical habitat around the old fishponds in Santa Rosa, New Mexico (Subunit 1a, Blue Hole Hatchery), is all but destroyed and will likely be completely destroyed given current development plans by the City of Santa Rosa. Hence, the commenter did not think the site could be considered essential to the conservation of the species.

Our Response: We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where this species is located at Blue Hole Hatchery (Subunit 1a) and found that the site still remains occupied and retains the necessary physical and biological features essential to the conservation of the species. Additionally, although the area has been disturbed, it is likely that Wright's marsh thistle seeds are persisting in the soils at the site, creating a seed bank. Designation of critical habitat at this location will help ensure that the remaining population and any associated seeds present at this site are protected into the future. Additionally, in areas that are occupied at the time of listing, critical habitat may be designated in areas that contain the necessary physical and biological features and may require special management or protection. The physical and biological features in this unit may require special management considerations to protect the species from impacts associated with ground and surface water depletion, as well as native and nonnative plant invasion. Special management or protection may include implementing watershed/wetland restoration efforts. Because this site is currently occupied and contains the physical and biological features essential to the conservation of the species and which may require special management considerations or protection, this location meets the definition of critical habitat (see Criteria Used To Identify Critical Habitat, below) and is included in this final designation.

(6) *Comment:* The State of New Mexico provided information associated with a previously undocumented population on private lands in New Mexico on the Redhawk Conservation Easement which was placed in stewardship through the conservation easement program with the Natural Resources Conservation Service (NRCS). The commenter recommended that the Service designate this population, which contains several thousand plants, as critical habitat.

Our Response: The Service reached out to NRCS and other individuals with knowledge of this population of Wright's marsh thistle to request information about the Redhawk Conservation Easement. To date, we have been unable to verify that the Redhawk Conservation Easement contains a population of Wright's marsh thistle and have not been able to assess if the physical and biological features exist at this location. Therefore, we made no changes to this final rule as a result of this comment, and this potential location is not designated as critical habitat in this rule. If we receive new information in the future as a result of additional surveys, we will analyze such information in the course of developing a recovery plan for the species or in 5-year reviews of its status. If we determine that the new information indicates that the area meets the Act's definition of critical habitat, we may choose to revise our critical habitat designation for this species following the Service's established processes for revising a critical habitat designation.

(7) *Comment:* The State of New Mexico provided additional information regarding Wright's marsh thistle population trends at two cienegas in Santa Rosa, New Mexico. Specifically, the commenter noted that, based on 3- to 5-year trend data from Blue Hole and Ballpark cienegas, the trend appears to be declining despite extensive habitat restoration efforts. The commenter suggested that we should adjust our population condition ratings for the two cienegas in the Future Scenario 1 from moderate to low.

Our Response: We relied on the best available data to develop the condition ratings referenced by the commenter in Table 2 of the September 29, 2020, proposed rule (85 FR 61460; see p. 61469). The four scenarios incorporated the best available information on projections of threat data up to 50 years into the future. We reviewed the information provided by the commenter, but we did not make any changes to this final rule as a result of the information because a relatively high number of patches of Wright's marsh thistle continue to exist at this location. After considering the information presented by the commenter, we conclude that the underlying information relied on to establish this condition rating is still accurate; however, the information provided by the commenter, as well as any new information that may become available to us, will be considered and analyzed in the course of developing a recovery plan for the species, or in a future 5-year review of its status.

Comments From the Public

(8) *Comment:* A commenter disagreed with our identification of stressors. Specifically, they stated that although the September 29, 2020, proposed rule (85 FR 61460) identified stressors

including decreased water availability to habitat, ungulate grazing, native and nonnative plants, and oil and gas development and mining, the Service did not conduct enough research to make a determination of which stressor or combination of stressors would lead to a reduction in the size of sites.

Our Response: We are required, by the Act, to make our listing determinations solely on the basis of the best commercial and scientific information available at the time the proposed rule is developed. The stressors identified in the September 29, 2020, proposed rule (85 FR 61460) are those that were known to be currently impacting the species when we published that proposal. While there may be other stressors that affect Wright's marsh thistle, we lacked sufficient information about those stressors and their effects to assess their impacts on the species. The SSA report assesses how individual stressors affect the species, as well as how stressors, in combination with each other, may act cumulatively to affect the species. The information upon which we based our rationale for including these stressors as the primary threats to Wright's marsh thistle is cited earlier in this final rule and more thoroughly discussed in chapter 4 of the SSA report (USFWS 2017, pp. 39–56).

(9) *Comment:* A commenter stated their opposition to the 4(d) rule based on the fact that important water sources occur in the same locations where Wright's marsh thistle is growing. Wildlife and livestock use these waters for their survival, and some water sources have official water rights registered in the respective counties. The commenter stated that Federal agencies must be respectful of water rights as private property rights and seek alternative resolutions with all parties involved to sustain Wright's marsh thistle's survival.

Our Response: As stated in the proposed and this final 4(d) rule, the prohibitions identified are limited to removing and reducing to possession the species from areas under Federal jurisdiction; maliciously damaging or destroying any such species on any such area; or removing, cutting, digging up, or damaging or destroying any such species on any other area in knowing violation of any law or regulation of any State law or regulation or in the course of any violation of a State criminal trespass law. Therefore, other than actions to the species committed in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law, water rights will not be affected by the implementation of this 4(d) rule for Wright's marsh thistle. Also, in addition to the public comment period provided for the September 29, 2020, proposed rule (85 FR 61460), we have engaged with Federal, Tribal, and State governments, as well as nongovernmental organizations and the general public, by soliciting review and comment on the SSA report. We will continue to work with all interested parties, including private property owners, on the conservation of Wright's marsh thistle into the future.

(10) *Comment:* A commenter stated the Service should list the Wright's marsh thistle as endangered rather than threatened because of the contraction in the species' range, reduction in genetic diversity, lack of effective conservation measures, and widespread alterations of waterways in the Southwest.

Our Response: Based on the SSA report (USFWS 2017, entire), which characterizes the viability of the species now and into the future, we found the species did not meet the Act's definition of an endangered species. Currently, three Wright's marsh thistle populations have moderate resiliency, the species exhibits population redundancy, and there are two representative areas (east and west) that support genetic and environmental diversity. Therefore, the species is not currently in danger of extinction. Rather, the species meets the Act's definition of a threatened species because of the stressors that are affecting Wright's marsh thistle's long-term viability. No information we received during the public comment period led us to change that status determination. If we receive new information in the future, we will analyze such information in the course of developing a recovery plan for the species or in 5-year reviews of its status. If we determine that the new information indicates that the species' status should be changed from threatened to endangered, we would begin rulemaking to reclassify the species.

(11) *Comment:* One commenter stated that we incorrectly set our ''foreseeable future'' at 25 years when we should have used 50 years, as was analyzed in the SSA report.

Our Response: As discussed in the September 29, 2020, proposed rule (85 FR 61460), we looked at a variety of timeframes, including 50 years. We found that as the projections for the various stressors went past 25 years in the scenarios, the uncertainties associated with some of those projections, particularly water use and depletion, increased. Thus, 25 years was the maximum time that the Service could reasonably determine that future threats and the species' response to those threats are likely. We note, however, that Wright's marsh thistle was determined to be at risk of extinction in the 25-year timeframe and, as the primary projected threats would not likely be reduced or ameliorated past that point in time, the species would also be at risk of extinction in the 50-year timeframe.

(12) *Comment:* One commenter stated that we should designate additional critical habitat for Wright's marsh thistle, including in Texas, in unoccupied portions of the historical range that have other species of flowering plants that serve to attract pollinators and provide patches between occupied habitat, and places that have no confirmed historical occurrences of the Wright's marsh thistle but that are known to have originally functioned as cienegas or other wetlands and that can be restored as such. These sites would then be suitable for reintroduction of the thistle. Another commenter requested that we expand the designation of critical habitat to include historical habitat in eastern Arizona, western parts of Texas, and Blue Springs State Park in Florida.

Our Response: As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we reviewed available information pertaining to the habitat requirements of the species and identified specific areas within the geographical area occupied by the species at the time of listing that contain the physical and biological features essential to the conservation of the species and may need special management or protection. We did not identify any areas outside the geographical area occupied by the species that are essential for Wright's marsh thistle conservation. For our SSA, we analyzed the best available data regarding Wright's marsh thistle distribution and abundance (including the known historical and current population locations) and considered the conservation needs of the species (USFWS 2017, pp. 14–28).

Additionally, for this final rule, we reviewed and considered new information we received during the public comment period for the proposed rule (85 FR 61460) published September 29, 2020, including information on previously unknown Wright's marsh thistle occurrences in eastern Arizona, western parts of Texas, and an alleged occurrence at Blue Springs State Park in Florida. However, we found the information provided on the Texas and Arizona occurrences was not sufficient

to substantiate that these sites meet the Act's definition of critical habitat for this species. For the Texas occurrence, although the specimen was first collected in 2003, we were unable to verify the species presence based on the information provided by the commenter or assess the location against the criteria established for designating critical habitat. The historical locations in Arizona are areas that are no longer occupied by the species and these historical locations lack the physical and biological features for the species. Please see Areas Occupied at the Time of Listing for a more in-depth explanation for both Texas and Arizona populations. To our knowledge, the species has never been documented in Florida and no physical evidence of the species was provided; therefore, we conclude based on the best scientific data available that Florida is not part of the range of the species. Furthermore, in the critical habitat discussion below, we found that the areas currently occupied by the species are sufficient to conserve the species. Thus, we do not plan to designate unoccupied areas as critical habitat as they are not essential for the species conservation. If new information becomes available, we will consider it when developing our recovery plan for the species.

Determination of the Status of Wright's Marsh Thistle

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range, and ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of ''endangered species'' or ''threatened species'' because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats and the cumulative effect of the threats under the section 4(a)(1) factors to Wright's marsh thistle.

Wright's marsh thistle is a narrow endemic (restricted to a small range) with a historical, documented decline. The historical range of the species included 10 locations in New Mexico, 2 locations in Arizona, and 2 locations in Mexico. Wright's marsh thistle has been extirpated from all historical locations in Arizona and Mexico, as well as two locations in New Mexico. In addition, the currently extant populations have declined in population numbers over time based on comparisons between 1995 and 2012 surveys (Sivinski 1996, entire; Sivinski 2012, entire). As a result, the current extant area of the remaining eight populations has contracted in recent years and is currently approximately only 43 ha (106 ac). Of the remaining eight extant populations, three have moderate resiliency, two have low resiliency, and three have very low resiliency and are likely at risk of extirpation (USFWS 2017, pp. 36). The species historically had representation in the form of two morphologically distinct and geographically separate forms (eastern and western populations); the species continues to maintain representation currently in these forms, although population sizes have decreased. Population redundancy is maintained across these representation areas, as well.

Wright's marsh thistle is facing threats across its range that have led to reduced resiliency, redundancy, and representation. Wright's marsh thistle faces threats from habitat degradation due to decreased water availability, livestock grazing, native and nonnative plants, and oil and gas development and mining (Factor A). These threats, which are expected to be exacerbated by continued drought and the effects of climate change (Factor E), were important factors in our assessment of the future viability of Wright's marsh thistle. In addition, small, isolated populations and lack of connectivity contribute to the thistle's low resiliency to stochastic events (Factor E). We expect a further decrease in water availability, along with increased negative impacts from grazing, native and nonnative plants, oil and gas development, and mining. Given current and anticipated future decreases in resiliency, populations would become more vulnerable to extirpation from stochastic events, in turn, resulting in concurrent losses in representation and redundancy. The range of plausible future scenarios of the species' habitat conditions and population factors suggest possible extirpation in as many as five of eight currently extant populations. The most optimistic model projected no change in resiliency for the eight populations.

As assessed in the SSA report and displayed above in Table 2, the current condition rankings for the eight extant populations show that three populations are in moderate condition, two population are in low condition, and three populations are in very low condition. Wright's marsh thistle exhibits representation across two morphologically distinct and geographically separate forms. While threats are currently acting on the thistle throughout its range, the three eastern populations (Santa Rosa, Bitter Lake, and Blue Springs) were found to have moderate resiliency for their current condition. Populations with moderate resiliency have some ability to withstand stochastic events and continue to contribute to overall redundancy for the species. The threats currently acting on the thistle are likely to reduce the size of some populations as water availability becomes restricted, but the populations currently maintain sufficient resiliency. Therefore, we did not find that the thistle is currently in danger of extinction throughout all of its range, based on the current condition of the species; thus, an endangered status is not appropriate.

Wright's marsh thistle is facing threats across its range that have led to reduced resiliency, redundancy, and representation. According to our assessment of plausible future scenarios, the species is likely to become an endangered species within the foreseeable future throughout all of its range. For the purposes of this determination, the foreseeable future is considered approximately 25 years into the future. This timeframe was arrived at by looking at the various future projections associated with data from the Intergovernmental Panel on Climate Change (IPCC), U.S. Climate Resilience Toolkit, future development plans from the City of Alamogordo and Santa Rosa, and grazing management information from the U.S. Forest Service. These data sources covered a variety of timeframes, but all covered a span of at least 50 years. We, therefore, looked at the projections from these sources in each of our future scenarios out to three-time steps: 10 years, 25 years, and 50 years. We found that as the projections for the various stressors went past 25 years in the scenarios, the uncertainties associated with some of those projections, particularly water use and depletion, increased.

Our analysis of the species' current and future conditions shows that resiliency, representation, and redundancy for Wright's marsh thistle are likely to continue to decline to the degree that the thistle is likely to become in danger of extinction within the foreseeable future throughout all of its range. While the ''Optimistic'' scenario resulted in two of the populations with moderate current condition improving to high condition due to increased conservation measures, the other three scenarios all resulted in decreased resiliency for some if not most populations. The ''Continuing Current Conditions'' scenario resulted in one of the current eight extant populations becoming extirpated, the ''Major Effects'' scenario resulted in three of the current eight extant populations becoming extirpated, and the ''Severe Effects'' scenario resulted in five of the current eight extant populations becoming extirpated. Based on our understanding of the increasing trends in threats as analyzed into the foreseeable future (*i.e.,* 25 years), the ''Continuing Current Conditions'' scenario becomes less likely. The decreased resiliency of populations projected in three of the four scenarios would lead to subsequent losses in redundancy and representation, and an overall decline in species viability in the foreseeable future. Further details on the likelihood of scenarios can be found in chapter 5 of the SSA report (USFWS 2017, pp. 57–59).

Due to the continuation of threats at increasing levels, we anticipate a severe future reduction in the thistle's overall range and the extirpation of several populations. Furthermore, we anticipate that the variety of factors acting in combination on the remaining habitat and populations are likely to reduce the overall viability of the species to a very low level. In addition, the conservation measures currently in place are not adequate to overcome the negative impacts from increasing threats, and future conservation measures are not considered highly plausible. The risk of extinction will be high because the remaining populations are small and isolated and have limited or no potential for recolonization after local population extirpations. Thus, after assessing the best available information, we determine that Wright's marsh thistle is not currently in danger of extinction but is likely to become in danger of extinction within the foreseeable future, throughout all of its range, and it, therefore, meets the Act's definition of a threatened species.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. 2020) (*Everson*), vacated the aspect of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (Final Policy; 79 FR 37578; July 1, 2014) that provided that the Service does not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Center for Biological Diversity,* we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.,* endangered). In undertaking this analysis for Wright's marsh thistle, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify portions of the range where the species may be endangered. We evaluated the range of the Wright's marsh thistle to determine if the species is in danger of extinction now in any portion of its range. The range of a species can theoretically be divided into portions in an infinite number of ways. We focused our analysis on portions of the species' range that may meet the definition of an endangered species. For Wright's marsh thistle, we considered whether the threats or their effects on the species are greater in any biologically meaningful portion of the species' range than in other portions such that the species is in danger of extinction now in that portion.

We examined the following threats: decreased water availability from drought and water management practices (*e.g.,* groundwater pumping and surface water diversions) (Factor A); native and nonnative plants (Factor A and E); livestock grazing (herbivory; Factor C); oil, gas, and mining development (Factor A and E); and the cumulative effects of these threats. Population condition differences exist between the eastern and the western portions of the range. The populations in the western part of the range of Wright's marsh thistle are all in lower condition—either low or very low—than those in the eastern portion of the species' range, are all in moderate or better condition. Therefore, because the western populations have a lower resiliency and, therefore, higher risk of extirpation, the western populations *may* have a different status.

We then proceeded to the significance question, asking whether there is substantial information indicating that the western portion of the range *may* be significant. As an initial note, the Service's most recent definition of ''significant'' within agency policy guidance has been invalidated by court order (see *Desert Survivors* v. *Dep't of the Interior,* No. 16–cv–01165 (N.D. Cal. Aug. 24, 2018). Therefore, for purposes of this analysis the Service is screening for significant portions of the range by applying any reasonable definition of ''significant.'' Biological importance/significance is often considered in terms of resiliency, redundancy, or representation. We evaluated the available information about the western populations of Wright's marsh thistle in this context, assessing its significance in terms of these conservation concepts, and determined the information did not substantially indicate it may be significant. The five populations in the western area comprise a total of 7.2 acres, out of a total of 108.3 acres that the species currently occupies: 6.7 percent of the species' range. The small area occupied by the western populations relative to the species' overall range led us to conclude that this portion of the Wright's marsh thistle range is not significant in terms of its overall contribution to the species' resiliency, redundancy, and representation. Therefore, because we could not answer the significance question in the affirmative, we conclude that the western population does not warrant further consideration as a significant portion of the range.

Overall, we found no substantial information that would indicate the western populations may be significant. While this area provides some

contribution to the species' overall ability to withstand catastrophic or stochastic events (redundancy and resiliency, respectively), the species has larger populations that occupy larger areas in the east. Therefore, because we could not answer both the status and significance questions in the affirmative, we conclude that the western portion of the range does not warrant further consideration as a significant portion of the range of Wright's marsh thistle. Therefore, no portion of the species range provides a basis for determining that the species is in danger of extinction in a significant portion of its range, and we determine that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Determination of Status

Our review of the best available scientific and commercial information indicates that Wright's marsh thistle meets the Act's definition of a threatened species. Therefore, we are listing Wright's marsh thistle as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies; private organizations; and individuals. The Act encourages cooperation with the states and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and subsequent preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or for removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (*https://www.fws.gov/program/endangered-species*), or from our New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Funding for recovery actions for this species will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, states within which Wright's marsh thistle occur including New Mexico and Texas will be eligible for Federal funds to implement management actions that promote the protection or recovery of Wright's marsh thistle. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/service/financial-assistance.* Please let us know if you are interested in participating in recovery efforts for Wright's marsh thistle. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. Federal agency actions within Wright's marsh thistle habitat that may require conference or consultation, or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the U.S. Fish and Wildlife Service and U.S. Forest Service; issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within the range of the species. The discussion below regarding protective regulations under section 4(d) of the Act complies with our policy.

II. Final Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as [she] deems necessary and advisable to provide for the conservation of species listed as threatened. The U.S. Supreme Court has

noted that statutory language like ''necessary and advisable'' demonstrates a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592 (1988)). Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife or include a limited taking prohibition (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [her] with regard to the permitted activities for those species. The Secretary may, for example, permit taking, but not importation of such species, or [she] may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Exercising this authority under section 4(d), the Service developed a rule that is designed to address Wright's marsh thistle's specific threats and conservation needs. Although the statute does not require the Service to make a ''necessary and advisable'' finding with respect to the adoption of specific prohibitions under section 9, we find that this rule, as a whole, satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the Wright's marsh thistle. As discussed above under Summary of Biological Status and Threats, the Service has concluded that Wright's marsh thistle is likely to become in danger of extinction within the foreseeable future primarily due to habitat loss and modification. The provisions of this 4(d) rule will promote conservation of the species by encouraging management of the landscape in ways that meet landowner's management priorities while providing for the conservation needs of Wright's marsh thistle. The provisions of this rule are one of many tools that the Service will use to promote the conservation of the Wright's marsh thistle.

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action that is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

This obligation does not change in any way for a threatened species with a species-specific 4(d) rule. Actions that result in a determination by a Federal agency of ''not likely to adversely affect'' continue to require the Service's written concurrence and actions that are ''likely to adversely affect'' a species require formal consultation and the formulation of a biological opinion.

Provisions of the 4(d) Rule

This 4(d) rule will provide for the conservation of Wright's marsh thistle by prohibiting, except as otherwise authorized or permitted, any person subject to the jurisdiction of the United States from the following: Removing and reducing to possession the species from areas under Federal jurisdiction; maliciously damaging or destroying any such species on any such area; or removing, cutting, digging up, or damaging or destroying any such species on any other area in knowing violation of any law or regulation of any State law or regulation or in the course of any violation of a State criminal trespass law. Almost 30 percent of occupied Wright's marsh thistle habitat is on Federal land. As discussed in the Summary of Biological Status and Threats (above), habitat loss and modification are affecting the viability of Wright's marsh thistle (Factor A). A range of activities that occur on Federal land have the potential to impact the thistle, including changes in water availability, ungulate grazing, and oil and gas development. The regulation of these activities through this 4(d) rule would help enhance the conservation of Wright's marsh thistle by preserving the species' remaining populations on Federal lands and decrease synergistic, negative effects from other stressors. As a whole, this 4(d) rule will help in the efforts to recover the species.

Despite these prohibitions regarding threatened species, we may under certain circumstances issue permits to carry out one or more otherwise-prohibited activities, including those described above. The regulations that govern permits for threatened plants state that the Director may issue a permit authorizing any activity otherwise prohibited with regard to threatened species (50 CFR 17.72). Those regulations also state that the permit shall be governed by the provisions of § 17.72 unless a special rule applicable to the plant is provided in §§ 17.73 to 17.78. Therefore, permits for threatened species are governed by the provisions of § 17.72 unless a species-specific 4(d) rule provides otherwise. However, under our recent revisions to § 17.71, the prohibitions in § 17.71(a) will not apply to any plant listed as a threatened species after September 26, 2019. As a result, for threatened plant species listed after that

date, any protections must be contained in a species-specific 4(d) rule. We did not intend for those revisions to limit or alter the applicability of the permitting provisions in § 17.72, or to require that every species-specific 4(d) rule spell out any permitting provisions that apply to that species and species-specific 4(d) rule. To the contrary, we anticipate that permitting provisions would generally be similar or identical for most species, so applying the provisions of § 17.72 unless a species-specific 4(d) rule provides otherwise would likely avoid substantial duplication. Moreover, this interpretation brings § 17.72 in line with the comparable provision for wildlife at 50 CFR 17.32, in which the second sentence states that the permit shall be governed by the provisions of § 17.32 unless a special rule applicable to the wildlife, appearing in 50 CFR 17.40 to 17.48, provides otherwise. Under 50 CFR 17.72 with regard to threatened plants, a permit may be issued for the following purposes: for scientific purposes, to enhance propagation or survival, for economic hardship, for botanical or horticultural exhibition, for educational purposes, or for other purposes consistent with the purposes and policy of the Act. Additional statutory exemptions from the prohibitions are found in sections 9 and 10 of the Act.

We recognize the special and unique relationship with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist the Services in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Services shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency which is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, will be able to conduct activities designed to conserve Wright's marsh thistle that may result in otherwise prohibited activities without additional authorization.

Nothing in this 4(d) rule will change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of Wright's marsh thistle. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between Federal agencies and the Service, where appropriate.

III. Final Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features.

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the ''geographical area occupied by the species'' as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features that occur in specific areas, we focus on the specific features that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied

by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. When designating critical habitat, the Secretary will first evaluate areas occupied by the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to:

(1) Conservation actions implemented under section 7(a)(1) of the Act;

(2) Regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and

(3) The prohibitions found in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Critical Habitat Prudency and Determinability

In our SSA report and the proposed listing determination for Wright's marsh thistle, we determined that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to the species and that those threats in some way can be addressed by section 7(a)(2) consultation measures. Accordingly, such a designation could be beneficial to the species. Therefore, because none of the circumstances enumerated in our regulations at 50 CFR 424.12(a)(1) has been met and because there are no other circumstances the Secretary has identified for which this designation of critical habitat would be not prudent, we have determined that the designation of critical habitat is prudent for Wright's marsh thistle. We have also reviewed the available information pertaining to the biological needs of the species and habitat characteristics where the species is located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for Wright's marsh thistle.

Physical or Biological Features

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. The regulations at 50 CFR 424.02 define ''physical or biological features essential to the conservation of the species'' as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkali soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic needed to support the life history of the species.

In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Water availability is a requirement for three of the four life stages of Wright's marsh thistle's life cycle: Seedlings, rosettes, and mature plants. Optimal habitat should include seeps, springs, cienegas, and streams spreading water normally both above and below ground, with surface or subsurface water flow. The water present in this habitat should

be sufficient to allow for permanent root saturation of Wright's marsh thistle in order to provide conditions needed for successful reproduction and survival.

Alkaline soils are required by all four life stages of Wright's marsh thistle's life cycle: Seeds, seedlings, rosettes, and mature plants. These soils are typically found associated with alkaline springs and seeps ranging from low desert up to ponderosa pine forest. Often, water may be available on the landscape in a variety of riparian areas; however, without the presence of alkaline soils in conjunction with water availability, Wright's marsh thistle is unlikely to maintain viability.

Full sunlight is necessary for development of rosettes into mature plants, as well as the survival of mature plants. Optimal habitat includes areas which provide access to sufficient sunlight exposure with no obstructions of sunlight during most life stages of Wright's marsh thistle. These areas should not have dense vegetative cover, which creates competition for sunlight and can negatively impact maturation and flowering of the thistle.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Diverse native floral communities are necessary to attract pollinators in order to complete cross pollination of Wright's marsh thistle plants. These communities vary depending on location but may include bulrush (*Scirpus* spp.), beaked spikerush (*Eleocharis rostellata*), Pecos sunflower (*Helianthus paradoxus*), rush (*Juncus* spp.), cattail (*Typha* spp.), and other native flowering plants (Sivinski 1996, pp. 2–4). Many generalist pollinators may visit Wright's marsh thistle (Sivinski 2017, entire). The most common pollinators of the thistle are bees, especially bumble bees (*Bombus* spp.) (Sivinski 2017, entire). A diverse native floral community ensures sufficient pollinators to promote cross pollination within and among patches of Wright's marsh thistle.

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of Wright's marsh thistle from studies of the species' habitat, ecology, and life history as described below. Additional information can be found in the SSA report (USFWS 2017, p. 39), available on *http://www.regulations.gov* under Docket No. FWS–R2–ES–2018–0071. We have determined that the following physical or biological features are essential to the conservation of Wright's marsh thistle:

- Water-saturated soils with surface or subsurface water flow that allows permanent root saturation and seed germination;
- Alkaline soils;
- Full sunlight; and
- Diverse floral communities to attract pollinators.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. As mentioned above, in the case of Wright's marsh thistle, these features include water-saturated soils with surface or subsurface water flow that allows permanent root saturation and seed germination, alkaline soils, full sunlight, and diverse floral communities to attract pollinators. The features may require special management considerations or protection to reduce the following threats: Ground and surface water depletion, increasing drought and changes in climate change, livestock grazing, oil and gas development and mining, and native and nonnative plants. Localized stressors may also include herbicide use and mowing. The species occupies small areas of seeps, springs, and wetland habitat in an arid region that is experiencing drought as well as ongoing and future water withdrawals. The species' highly specific requirements of saturated soils with surface or subsurface water flow make it particularly vulnerable to desiccation and loss of suitable habitat. Furthermore, the thistle's need for full sunlight makes it particularly vulnerable to native and nonnative grass planting and habitat encroachment.

Management activities that could ameliorate these threats include, but are not limited to: (1) Conservation efforts to ensure sufficient water availability; (2) managing livestock grazing via the use of exclosures; (3) control of native and nonnative plants via controlled burning or mechanical treatments; (4) spill prevention and groundwater protection during oil and gas development and mining; (5) watershed/wetland restoration efforts; and (6) efforts to restore a diverse floral community sufficient to attract pollinators. These management activities would protect the physical or biological features for Wright's marsh thistle by providing for surface or subsurface water flow for permanent root saturation, soil alkalinity necessary for all life stages, the availability of direct sunlight for plant development, and habitat for pollinators to complete cross pollination of the thistle. Additionally, management of critical habitat lands would help limit the impacts of current risks to population viability.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. We are not designating any areas outside the geographical area occupied by the species because formerly occupied areas, such as the ones at Lake Valley, New Mexico, and San Bernadino, Arizona, have become unsuitable due to lack of water as a result of various development activities. Therefore, the unoccupied (but historically occupied) locations do not support any of the physical or biological features for the Wright's marsh thistle and will not contribute to future conservation. Thus, we have not identified any unoccupied areas that meet the definition of critical habitat.

We used existing occurrence data for Wright's marsh thistle and information on the habitat and ecosystems upon which the species depends. These sources of information included, but were not limited to:

(1) Data used to prepare the SSA and this rule to list the species;

(2) Information from biological surveys;

(3) Various agency reports and databases;

(4) Information from the U.S. Forest Service and other cooperators;

(5) Information from species experts;

(6) Data and information presented in academic research theses; and

(7) Regional Geographic Information System (GIS) data (such as species occurrence data, land use, topography, aerial imagery, soil data, wetland data, and land ownership maps) for area calculations and mapping.

Areas Occupied at the Time of Listing

The critical habitat designation includes currently occupied sites within the species' historical range that have

retained the necessary physical and biological features that will allow for the maintenance and expansion of existing populations. Wright's marsh thistle was historically known to occur in an additional site in Arizona (Sivinski 2012, p. 2). The single location in Arizona was collected in 1851 from San Bernardino Cienega, which straddles the international border with Mexico; the location no longer has suitable wetland habitat in Arizona (Baker 2011, p. 7), and we do not consider the site essential for the conservation of the thistle because of the lack of suitable habitat and very low restoration potential. A site in Presidio County, Texas, was identified in 2003, and mentioned during the proposed rule's public comment period as having Wright's marsh thistle. The Texas specimen was collected in 2003 and misidentified as a different thistle species. It was not correctly identified until 2018, but no field surveys have been conducted to determine if the species still exists at this site. We have insufficient information associated with the Texas location to know if this site is occupied at the time of listing and we are unsure if this population has persisted since the original collection was made. We also do not have any information about whether the habitat is intact and if it contains one or more of the necessary physical or biological features for the species for us to consider designating this location as critical habitat under the first prong of the Act's definition of critical habitat. Likewise, the best available scientific data are not sufficient for us to determine if the site is essential for the conservation of the thistle at this time (*i.e.,* qualifies for consideration as critical habitat under the second prong of the Act's definition of critical habitat).

New Mexico had 10 historical occurrences, but in a recent search effort at one of the locations (Lake County), the thistle was not found (Sivinski 2011, p. 40) and the habitat was found to be converted to an impervious surface. Another of the 10 records (Rattlesnake Springs, Eddy County) is likely a hybrid between Wright's marsh thistle and Texas thistle (NMRPTC 2009, p. 2), and the site where it was recorded is now a golf course. A new potential site in New Mexico located on a Natural Resources Conservation Service easement was identified during the September 29, 2020, proposed rule's public comment period; however, we lack sufficient information to determine if one or more physical and biological features exist at this site. Therefore, we do not consider these three sites in New Mexico to be essential to the conservation of the thistle, because the species is no longer present, the habitat is no longer suitable, the species was misidentified, or we lack sufficient information. However, the remaining eight locations in New Mexico meet the definition of areas occupied by the thistle at the time of listing; they are: Santa Rosa, Guadalupe County; Bitter Lake NWR, Chaves County; Blue Spring, Eddy County; La Luz Canyon, Karr/Haynes Canyon, Silver Springs, and Tularosa Creek, Otero County; and Alamosa Creek, Socorro County.

In summary, for areas within the geographic area occupied by the species at the time of listing, we delineated critical habitat unit boundaries using the following process:

(1) We obtained point observations of all currently occupied areas;

(2) We drew minimum convex polygons around the point observations; and

(3) We expanded the polygons to include all adjacent areas containing the essential physical and biological features (specifically the wetted area/moist soil outside of highly vegetated locations) to support life-history processes essential to the conservation of the species.

When determining critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for Wright's marsh thistle. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We are designating as critical habitat lands that we determined are occupied at the time of listing and contain one or more of the physical or biological features that are essential to support life-history processes of the species. We are not designating any areas that are not currently occupied by the species because we were unable to identify areas that support the physical and biological features. Additionally, we did not designate additional areas that were recommended for consideration during the public comment period because we do not have sufficient information to determine if they are occupied at the time of listing or that the physical and biological features exist at any of these locations and, therefore, cannot conclude that any area would be essential for the conservation of the species.

Eight units and 13 subunits meet the definition of critical habitat based on one or more of the physical or biological features being present to support Wright's marsh thistle's life-history processes. All eight units contain all of the identified physical or biological features necessary to support multiple life- history processes. However, at the subunits level, some stressors such as non-native plants may limit the ability of the Wright's marsh thistle to access the available physical and biological features. Unit 4 and a portion of Unit 6 are excluded from the designation for reasons described below in Exclusions. The final critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this rule. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2018–0071 and on the New Mexico Ecological Services' website at *https://www.fws.gov/office/new-mexico-ecological-services.*

Critical Habitat Designation

We are designating 63.4 ha (156.8 ac) in 7 units and 13 subunits as critical habitat for Wright's marsh thistle. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the species. Table 3 provides the approximate area of each critical habitat unit. Table 4 breaks down the approximate percentage and size of the total critical habitat designation by ownership type. Approximately 35 hectares (87 acres) of Wright's marsh thistle critical habitat overlaps with the critical habitat of other species, including the Koster's springsnail (*Juturnia kosteri*), Noel's amphipod (*Gammarus desperatus*), Roswell springsnail (*Pyrgulopsis roswellensis*), Pecos sunflower (*Helianthus paradoxus*), and the New Mexico meadow jumping mouse (*Zapus hudsonius luteus*).

TABLE 3—CRITICAL HABITAT UNITS FOR WRIGHT'S MARSH THISTLE

Unit number and name	Subunit number and name	Ownership	Area
1—Santa Rosa	1a—Blue Hole Hatchery	City of Santa Rosa	0.93 ha (2.3 ac).
	1b—Blue Hole Road South	State	0.45 ha (1.1 ac).
	1c—State Highway 91 North	State	12.2 ha (30.1 ac).
	1d—Santa Rosa Ballpark South	City of Santa Rosa	0.97 ha (2.4 ac).
	1e—State Highway 91 South	City of Santa Rosa	5.9 ha (14.6 ac).
		Private	0.78 ha (1.92 ac).
	1f—Perch Lake	City of Santa Rosa	1.9 ha (4.6 ac).
	1g—Sheehan Trust	Private	2.4 ha (6.0 ac).
	1h—Freeman Property	City of Santa Rosa	0.18 ha (0.44 ac).
		Private	0.91 ha (2.24 ac).
2—Alamosa Springs		Private	1.58 ha (3.9 ac).
3—Bitter Lake	3a—NWR Unit 5	U.S. Fish and Wildlife Service	3.16 ha (7.8 ac).
	3b—NWR Unit 6	U.S. Fish and Wildlife Service	15.9 ha (39.2 ac).
4—Tularosa Creek		Tribal	Excluded.
5—La Luz Canyon		U.S. Forest Service	0.01 ha (0.03 ac).
6—Silver Springs		U.S. Forest Service	0.38 ha (0.95 ac).
		Tribal	Excluded.
7—Karr/Haynes Canyon	7a—Haynes Canyon Road	Private	0.008 ha (0.02 ac).
	7b—Karr Canyon Road	Private	0.73 ha (1.8 ac).
	7c—Raven Road	Private	1.05 ha (2.6 ac).
8—Blue Springs		Private	14.04 ha (34.7 ac).
Total			63.4 ha (156.8 ac).

Note: Area estimates reflect all land within critical habitat unit boundaries, and estimates may not sum due to rounding.

TABLE 4—APPROXIMATE PERCENTAGE AND SIZE OF TOTAL CRITICAL HABITAT DESIGNATION FOR WRIGHT'S MARSH THISTLE PER OWNERSHIP TYPE

Ownership type	Percent of total designation	Size of designation
Private	33.9	21.5 ha (53.18 ac).
Federal	30.6	19.45 ha (48 ac).
State	19.9	12.65 ha (31.2 ac).
City	15.6	9.88 ha (24.4 ac).
Tribal	Excluded	Excluded.

We present brief descriptions of all units and reasons why they meet the definition of critical habitat for Wright's marsh thistle, below.

Unit 1: Santa Rosa

Unit 1 consists of eight subunits comprising 26.6 ha (65.7 ac) in Guadalupe County, New Mexico. This unit consists of land owned by the City of Santa Rosa, the State of New Mexico, and private landowners. This unit partially overlaps with occupied habitat and designated critical habitat for the federally threatened Pecos sunflower. All subunits within the Santa Rosa unit contain all of the physical or biological features necessary to support the species.

Subunit 1a: Blue Hole Hatchery

Subunit 1a consists of 11 small land parcels comprising 0.93 ha (2.3 ac) in Guadalupe County, New Mexico. This subunit is occupied by Wright's marsh thistle and contains all of the physical or biological features necessary to support the species. Subunit 1a lies north of Blue Hole Road on City of Santa Rosa property at the abandoned Blue Hole Hatchery. Special management considerations or protection may be required in Subunit 1a to address ground and surface water depletion, as well as native and nonnative plant invasion. Such special management or protection may include conservation efforts to ensure water availability and decrease competition with native and nonnative plants via prescribed burning and mechanical treatments, if necessary. Special management or protection may also include watershed/wetland restoration efforts.

Subunit 1b: Blue Hole Road South

Subunit 1b consists of a small, 0.45-ha (1.1-ac) land parcel in Guadalupe County, New Mexico. This subunit is occupied by Wright's marsh thistle and contains all of the physical or biological features necessary to support the species. Subunit 1b lies south of Blue Hole Road and east of El Rito Creek on State of New Mexico land, which is an undeveloped portion of a wetland preserve. Special management considerations or protection may be required in Subunit 1b to address ground and surface water depletion, as well as native and nonnative invasion. Such special management or protection may include conservation efforts to ensure water availability and decrease competition with native and nonnative plants via prescribed burning and mechanical treatments, if necessary.

Special management or protection may also include watershed/wetland restoration efforts.

Subunit 1c: State Highway 91 North

Subunit 1c consists of 12.2 ha (30.1 ac) in Guadalupe County, New Mexico. This subunit is occupied by Wright's marsh thistle and contains all of the physical or biological features necessary to support the species. Subunit 1c lies north of State Highway 91, near Subunit 1b on State of New Mexico land, which is an undeveloped portion of a wetland preserve. Special management considerations or protection may be required in Subunit 1c to address ground and surface water depletion, as well as native and nonnative plant invasion. Such special management or protection may include conservation efforts to ensure water availability and decrease competition with native and nonnative plants via prescribed burning and mechanical treatments, if necessary. Special management or protection may also include watershed/wetland restoration efforts.

Subunit 1d: Santa Rosa Ballpark South

Subunit 1d consists of two small land parcels comprising 0.97 ha (2.4 ac) in Guadalupe County, New Mexico. This subunit is occupied by Wright's marsh thistle and contains all of the physical or biological features necessary to support the species. Subunit 1d lies south of the City of Santa Rosa ballpark, on an undeveloped portion of City of Santa Rosa land. Special management considerations or protection may be required in Subunit 1d to address ground and surface water depletion, as well as native and nonnative invasion. Such special management or protection may include conservation efforts to ensure water availability and decrease competition with native and nonnative plants via prescribed burning and mechanical treatments, if necessary. Special management or protection may also include watershed/wetland restoration efforts. Other special management considerations or protection may be required to address localized stressors from herbicide use and mowing in recreational areas.

Subunit 1e: State Highway 91 South

Subunit 1e consists of 6.7 ha (16.5 ac) in Guadalupe County, New Mexico. This subunit is occupied by Wright's marsh thistle and contains all of the physical or biological features necessary to support the species. Subunit 1e lies south of State Highway 91 on City of Santa Rosa and private lands. Special management considerations or protection may be required in Subunit 1e to address ground and surface water depletion, as well as native and nonnative plant invasion. Such special management or protection may include conservation efforts to ensure water availability and decrease competition with native and nonnative plants via prescribed burning and mechanical treatments, if necessary. Special management or protection may also include watershed/wetland restoration efforts.

Subunit 1f: Perch Lake

Subunit 1f consists of 1.9 ha (4.6 ac) in Guadalupe County, New Mexico. This subunit is occupied by Wright's marsh thistle and contains all of the physical or biological features necessary to support the species. Subunit 1f includes most of the shores of Perch Lake on City of Santa Rosa property, extending south into an undeveloped area. Special management considerations or protection may be required in Subunit 1f to address ground and surface water depletion, as well as native and nonnative plant invasion. Such special management or protection may include conservation efforts to ensure water availability and decrease competition with native and nonnative plants via prescribed burning and mechanical treatments, if necessary. Special management or protection may also include watershed/wetland restoration efforts. Other special management considerations or protection may be required to address localized stressors from herbicide use and mowing in areas around Perch Lake, which is located inside the subunit.

Subunit 1g: Sheehan Trust

Subunit 1g consists of 2.4 ha (6.0 ac) in Guadalupe County, New Mexico. This subunit is occupied by Wright's marsh thistle and contains all of the physical or biological features necessary to support the species. Subunit 1g lies east of River Road and the Pecos River on privately owned lands, which are currently held in a land trust. Special management considerations or protection may be required in Subunit 1g to address ground and surface water depletion, as well as native and nonnative plant invasion. Such special management or protection may include conservation efforts to ensure water availability and decrease competition with native and nonnative plants via prescribed burning and mechanical treatments, if necessary. Special management or protection may also include watershed/wetland restoration efforts. As this property was formerly grazed and may be grazed again in the future, special management or protection may be required to address impacts of livestock grazing as appropriate.

Subunit 1h: Freeman Property

Subunit 1h consists of five small parcels of land comprising 1.09 ha (2.68 ac) in Guadalupe County, New Mexico. This subunit is occupied by Wright's marsh thistle and contains all of the physical or biological features necessary to support the species. Subunit 1h lies west of Subunit 1g on City of Santa Rosa property and privately owned lands. Special management considerations or protection may be required in Subunit 1h to address ground and surface water depletion, as well as native and nonnative plant invasion. Such special management or protection may include conservation efforts to ensure water availability and decrease competition with native and nonnative plants via prescribed burning and mechanical treatments, if necessary. Special management or protection may also include watershed/wetland restoration efforts.

Unit 2: Alamosa Springs

Unit 2 consists of 1.58 ha (3.9 ac) in Socorro County, New Mexico. This unit is occupied by Wright's marsh thistle and contains all the physical or biological features necessary to support the species. Unit 2 lies mostly north of Forest Road 140 along Alamosa Creek, on privately owned land. This unit entirely overlaps with occupied habitat for the federally endangered Alamosa springsnail and federally threatened Chiricahua leopard frog. Special management considerations or protection may be required in this unit to address ground and surface water depletion, water quality, soil alkalinity, and native and nonnative plant invasion. Such special management or protection may include conservation efforts to ensure water availability, protect ground water and soil from contaminants during mining activities, and decrease competition with native and nonnative plants via prescribed burning and mechanical treatments, if necessary. Special management or protection may also include watershed/wetland restoration efforts.

Unit 3: Bitter Lake

Unit 3 consists of two subunits comprising 19.0 ha (47 ac) in Chaves County, New Mexico, on Bitter Lake National Wildlife Refuge (NWR). Unit 3 is occupied by Wright's marsh thistle and is entirely managed by the U.S. Fish and Wildlife Service. Both subunits within the Bitter Lake unit contain all

of the physical or biological features necessary to support Wright's marsh thistle. This unit overlaps with occupied habitat for the federally endangered Koster's springsnail, Noel's amphipod, and Roswell springsnail. The unit also overlaps with designated critical habitat for the Koster's springsnail, Noel's amphipod, Roswell springsnail, and Pecos sunflower.

Subunit 3a: NWR Unit 5

Subunit 3a consists of 3.16 ha (7.8 ac) in Chaves County, New Mexico, within Wetland Management Unit 5 on Bitter Lake NWR. This subunit is occupied by Wright's marsh thistle and contains all of the physical or biological features necessary to support the species. Special management considerations or protection may be required in Subunit 3a to address ground and surface water depletion, water quality, soil alkalinity, and native and nonnative plant invasion. Such special management or protection may include conservation efforts to ensure water availability, prevent spills and protect groundwater during oil and gas development, and decrease competition with native and nonnative plants via prescribed burning and mechanical and herbicide treatments, if necessary. Special management or protection may also include watershed/wetland restoration efforts.

Subunit 3b: NWR Unit 6

Subunit 3b consists of 15.9 ha (39.2 ac) in Chaves County, New Mexico, within Wetland Management Unit 6 on Bitter Lake NWR. This subunit is occupied by Wright's marsh thistle contains all of the physical or biological features necessary to support the species. Special management considerations or protection may be required in Subunit 3b to address ground and surface water depletion, water quality, soil alkalinity, and native and nonnative plant invasion. Such special management or protection may include conservation efforts to ensure water availability, prevent spills and protect groundwater during oil and gas development, and decrease competition with native and nonnative plants via prescribed burning and mechanical and herbicide treatments, if necessary. Special management or protection may also include watershed/wetland restoration efforts.

Unit 4: Tularosa Creek

Unit 4 consists of 0.65 ha (1.6 ac) in Otero County, New Mexico. This unit is occupied by Wright's marsh thistle and contains all of the physical or biological features necessary to support the species. Unit 4 lies along Indian Service Route 10, north of Tularosa Creek, on land owned by the Mescalero Apache Tribe. We have excluded the entire Unit 4 from this final critical habitat designation (see Exclusions, below).

Unit 5: La Luz Canyon

Unit 5 consists of 0.01 ha (0.03 ac) in Otero County, New Mexico, on the Lincoln National Forest. This unit is occupied by Wright's marsh thistle and contains all of the physical or biological features necessary to support the species. Unit 5 lies north of La Luz Canyon Road, along La Luz Creek, on lands managed by the U.S. Forest Service. Special management considerations or protection may be required in this unit to address ground and surface water depletion, as well as native and nonnative plant invasion. Such special management or protection may include conservation efforts to ensure water availability and to decrease competition with native and nonnative plants via prescribed burning and mechanical treatments, if necessary. Special management or protection may also include watershed/wetland restoration efforts. As this property has the potential to be grazed, special management or protection may be required to address impacts of livestock grazing as appropriate.

Unit 6: Silver Springs

Unit 6 consists of 0.62 ha (1.53 ac) in Otero County, New Mexico. This unit is occupied by Wright's marsh thistle and contains all of the physical or biological features necessary to support the species. Unit 6 lies east of State Highway 224, along Silver Springs Creek. This unit contains land on the Lincoln National Forest, which is managed by the U.S. Forest Service, and land owned by the Mescalero Apache Tribe. We have excluded 0.23 ha (0.58 ac) of land in Unit 6 owned by the Mescalero Apache Tribe from this final critical habitat designation (see Exclusions, below). This unit overlaps with occupied habitat and critical habitat for the federally endangered New Mexico meadow jumping mouse. Special management considerations or protection may be required in this unit to address ground and surface water depletion, as well as native and nonnative plant invasion. Such special management or protection may include conservation efforts to ensure water availability and decrease competition with native and nonnative plants via prescribed burning and mechanical treatments, if necessary. Special management or protection may also include watershed/wetland restoration efforts. As this property has the potential to be grazed, special management or protection may be required to address impacts of livestock grazing as appropriate.

Unit 7: Karr/Haynes Canyon

Unit 7 consists of three subunits that comprise 1.79 ha (4.42 ac) in Otero County, New Mexico. All subunits within the Karr/Haynes Canyon unit are occupied by Wright's marsh thistle and contain all of the physical or biological features necessary to support the species. This unit consists of privately owned lands.

Subunit 7a: Haynes Canyon Road

Subunit 7a consists of 0.008 ha (0.02 ac) in Otero County, New Mexico. This subunit is occupied by Wright's marsh thistle and contains all of the physical or biological features necessary to support the species. Subunit 7a lies south of Haynes Canyon Road on privately owned lands. Special management considerations or protection may be required in Subunit 7a to address ground and surface water depletion, as well as native and nonnative plant invasion. Such special management or protection may include conservation efforts to ensure water availability and decrease competition with native and nonnative plants via prescribed burning and mechanical treatments, if necessary. Special management or protection may also include watershed/wetland restoration efforts. As this property has the potential to be grazed, special management or protection may be required to address impacts of livestock grazing as appropriate.

Subunit 7b: Karr Canyon Road

Subunit 7b consists of two small parcels comprising 0.73 ha (1.8 ac) in Otero County, New Mexico. This subunit is occupied by Wright's marsh thistle and contains all of the physical or biological features necessary to support the species. Subunit 7b lies along either side of Karr Canyon Road on privately owned lands. Special management considerations or protection may be required in Subunit 7b to address ground and surface water depletion, as well as native and nonnative plant invasion. Such special management or protection may include conservation efforts to ensure water availability and decrease competition with native and nonnative plants via prescribed burning and mechanical treatments, if necessary. Special management or protection may also include watershed/wetland restoration efforts. As this property has the

potential to be grazed, special management or protection may be required to address impacts of livestock grazing as appropriate.

Subunit 7c: Raven Road

Subunit 7c consists of two small parcels comprising 1.05 ha (2.6 ac) in Otero County, New Mexico. This subunit is occupied by Wright's marsh thistle and contains all of the physical or biological features necessary to support the species. Subunit 7c lies along either side of Raven Road on privately owned lands. Special management considerations or protection may be required in Subunit 7c to address ground and surface water depletion, as well as native and nonnative plant invasion. Such special management or protection may include conservation efforts to ensure water availability and decrease competition with native and nonnative plants via prescribed burning and mechanical treatments, if necessary. Special management or protection may also include watershed/wetland restoration efforts. As this property has the potential to be grazed, special management or protection may be required to address impacts of livestock grazing as appropriate.

Unit 8: Blue Springs

Unit 8 consists of 14.04 ha (34.7 ac) in Eddy County, New Mexico. This unit lies along a small tributary north of the Black River on privately owned land. This unit is occupied by Wright's marsh thistle and contains all of the physical or biological features necessary to support the species. Subunit 7c overlaps with occupied habitat for the federally endangered Pecos gambusia. Special management considerations or protection may be required in this unit to address ground and surface water depletion, water quality, soil alkalinity, and native and nonnative plant invasion. Such special management or protection may include conservation efforts to ensure water availability, prevent spills and protect groundwater during oil and gas development, and decrease competition with native and nonnative plants via prescribed burning and mechanical treatments, if necessary. Special management or protection may also include watershed/wetland restoration efforts.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final rule revising the definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2) is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable. Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and if, subsequent to the previous consultation: (1) The amount or extent of taking specified in the incidental take statement is exceeded; (2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or (4) a new species is listed or critical habitat designated that may be affected by the identified action.

In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinitiate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

Application of the ''Adverse Modification'' Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As

discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that the Services may, during a consultation under section 7(a)(2) of the Act, find are likely to destroy or adversely modify critical habitat include, but are not limited to:

(1) Actions that would diminish permanent root saturation. Such activities could include, but are not limited to, water diversions and water withdrawals for agricultural, mineral mining, or urban purposes. These activities could reduce Wright's marsh thistle's water availability, and increase its competition for water resources, thereby depleting a resource necessary for the plant's normal growth and survival.

(2) Actions that would alter the alkalinity of the soil. Such activities could include, but are not limited to, oil and gas development and mining. These activities could result in significant ground disturbance that could alter the chemical and physical properties of the soil.

(3) Actions that would diminish the availability of full sunlight. Such activities could include, but are not limited to, vegetation management that encourages growth of competing native and nonnative species. These activities could lead to habitat encroachment resulting in a decreased availability of sunlight.

(4) Actions that would decrease the diversity and abundance of floral resources and pollinators. Such activities could include, but are not limited to, the use of pesticides and herbicides, livestock grazing, and oil and gas development and mining. These activities could lead to direct mortality of pollinators and diminish the floral resources available to pollinators.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DoD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. There are no DoD lands with a completed INRMP within the critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. Exclusion decisions are governed by the regulations at 50 CFR 424.19 and the Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (hereafter, the ''2016 Policy''; 81 FR 7226, February 11, 2016), both of which were developed jointly with the National Marine Fisheries Service (NMFS). We also refer to a 2008 Department of the Interior Solicitor's opinion entitled ''The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act'' (M–37016). We explain each decision to exclude areas, as well as decisions not to exclude, to demonstrate that the decision is reasonable.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise discretion to exclude the area only if such exclusion would not result in the extinction of the species. In the following sections we describe the process we took to consider each category of impacts and our analyses of the relevant impacts if exclusions to critical habitat designation are appropriate. Table 5 below provides approximate areas (ha, ac) of lands that meet the definition of critical habitat but that we are excluding from this final critical habitat rule under section 4(b)(2) of the Act.

TABLE 5—AREAS EXCLUDED FROM CRITICAL HABITAT DESIGNATION BY CRITICAL HABITAT UNIT FOR WRIGHT'S MARSH THISTLE

Unit/subunit	Landowner	Hectares (acres) excluded
Unit 4	Mescalero Apache Tribe	0.65 ha (1.6 ac).
Unit 6	Mescalero Apache Tribe	0.23 ha (0.58 ac).
Total excluded		0.88 ha (2.18 ac).

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the critical habitat units. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a critical habitat designation is analyzed by comparing

scenarios both ''with critical habitat'' and ''without critical habitat.''

The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary section 4(b)(2) exclusion analysis.

For this particular designation, we developed an incremental effect memorandum (IEM) considering the probable incremental economic impacts that may result from the designation of critical habitat. The information contained in our IEM, along with the SSA, was then used to develop a screening analysis of the probable effects of the designation of critical habitat for Wright's marsh thistle (Industrial Economics, Inc. 2018). We began by conducting a screening analysis of the designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out the geographic areas in which the critical habitat designation is unlikely to result in probable incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that would protect the habitat area as a result of the Federal listing status of the species. The screening analysis filters out particular areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. If the critical habitat designation contains any unoccupied units, the screening analysis assesses whether those units are unoccupied because they require additional management or conservation efforts that may incur incremental economic impacts. This screening analysis, combined with the information contained in our IEM, is what we consider our economic analysis of the critical habitat designation for Wright's marsh thistle and is summarized in the narrative below.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess, to the extent practicable, the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation.

In our evaluation of the probable incremental economic impacts that may result from the designation of critical habitat for Wright's marsh thistle, first we identified, in the IEM dated March 2, 2018, probable incremental economic impacts associated with the following categories of activities: (1) Water quantity/supply, (2) oil and gas development and mining, and (3) livestock grazing. We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. With the listing of Wright's marsh thistle, in areas where the species is present, Federal agencies are required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the thistle. With the species' critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat will be incorporated into the existing consultation process.

In our IEM, we attempted to clarify the distinction between the effects that will result from the species being listed and those attributable to the critical habitat designation (*i.e.,* difference between the jeopardy and adverse modification standards) for Wright's marsh thistle's critical habitat. Because critical habitat for Wright's marsh thistle is being designated concurrently with the species' listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to Wright's marsh thistle would also likely adversely affect the essential physical or biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of associated with the designation of critical habitat.

The Service is designating 63.4 ha (156.8 ac) across five New Mexico counties as critical habitat for Wright's marsh thistle. The Service has divided the critical habitat into seven units, with some further divided into subunits. All seven units are occupied by reproducing populations of the thistle. We are not designating any unoccupied habitat. Approximately 30.6 percent of the designation is located on Federal lands and 19.9 percent is on State-owned lands. Approximately 15.6 percent of the lands are owned by the City of Santa Rosa, and approximately 33.9 percent are privately owned. In these areas, any actions that may affect the species or its habitat would also affect designated critical habitat, and it is unlikely that any additional conservation efforts would be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of Wright's marsh thistle. Therefore, the potential incremental economic effects of the critical habitat

designation are expected to be limited to administrative costs.

The entities most likely to incur incremental costs are parties to section 7 consultations, including Federal action agencies and, in some cases, third parties, which are most frequently State agencies or municipalities. Our analysis of economic impacts makes the following assumptions about consultation activity over the next 10 years, most of which are more likely to overstate than understate potential impacts due to the history of biological assessments and implementation of project conservation measures by the action agencies. The analysis assumes that approximately five section 7 consultations will occur annually in the designated critical habitat, across all eight units, based on the previous consultation history in the area. Most of these are anticipated to occur in areas with Federal lands, including Units 3, 5, and 6, as well as the large Unit 1.

This estimate may overstate the number of consultations that will occur given available information on forecast activity. As stated above, we anticipate that conservation efforts needed to avoid adverse modification are likely to be the same as those needed to avoid impacts to the species itself. As such, costs of critical habitat designation for Wright's marsh thistle are anticipated to be limited to administrative costs. We anticipate that the incremental administrative costs of addressing adverse modification of critical habitat for the species in a section 7 consultation will be minor.

The incremental administrative burden resulting from the designation of critical habitat for Wright's marsh thistle, based on the anticipated annual number of consultations and associated consultation costs, is not expected to exceed $25,000 in most years. The designation is unlikely to trigger additional requirements under State or local regulations. Furthermore, the designation is quite small, limited to 63.4 ha (156.8 ac) in total, with the local government, municipal, and private lands limited to 31.33 ha (77.4 ac); therefore, the designation is not expected to have significant perceptional effects. Because the designation is not expected to result in incremental conservation efforts for the species, the designation is also unlikely to measurably increase the probability that the species will be conserved, and benefits are also unlikely to exceed $25,000 in a given year. In our economic analysis, we did not identify any ongoing or future actions that would warrant additional recommendations or project modifications to avoid adversely modifying critical habitat above those we would recommend for avoiding jeopardy to the species, and we anticipate minimal change in management at Bitter Lake NWR and Lincoln National Forest due to the designation of critical habitat for Wright's marsh thistle.

Consideration of National Security Impacts

Section 4(a)(3)(B)(i) of the Act may not cover all DoD lands or areas that pose potential national-security concerns (*e.g.,* a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), then national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of ''critical habitat.'' However, the Service must still consider impacts on national security, including homeland security, on those lands or areas not covered by section 4(a)(3)(B)(i), because section 4(b)(2) requires the Service to consider those impacts whenever it designates critical habitat. Accordingly, if DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns, or we have otherwise identified national-security or homeland-security impacts from designating particular areas as critical habitat, we generally have reason to consider excluding those areas.

However, we cannot automatically exclude requested areas. When DoD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, we must conduct an exclusion analysis if the Federal requester provides credible information, including a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. That justification could include demonstration of probable impacts, such as impacts to ongoing border-security patrols and surveillance activities, or a delay in training or facility construction, as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a reasonably specific justification, we will contact the agency to recommend that it provide a specific justification or clarification of its concerns relative to the probable incremental impact that could result from the designation. If we conduct an exclusion analysis because the agency provides a reasonably specific justification or because we decide to exercise the discretion to conduct an exclusion analysis, we will defer to the expert judgment of DoD, DHS, or another Federal agency as to: (1) Whether activities on its lands or waters, or its activities on other lands or waters, have national-security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected in the absence of an exclusion. In that circumstance, in conducting a discretionary section 4(b)(2) exclusion analysis, we will give great weight to national-security and homeland-security concerns in analyzing the benefits of exclusion.

In preparing this final designation, neither DoD nor Department of Homeland Security identified any potential impacts on national security or homeland security; as such, we anticipate no impact on national security or homeland security. During the September 29, 2020, proposed rule's public comment period, we did not receive any additional information on the impacts of the proposed designation on national security or homeland security to determine whether any specific areas should be excluded from this final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19; therefore, we made no changes to the critical habitat designation as a result of this consideration.

Consideration of Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. Other relevant impacts may include, but are not limited to, impacts to Tribes, States, local governments, public health and safety, community interests, the environment (such as increased risk of wildfire or pest and invasive species management), Federal lands, and conservation plans, agreements, or partnerships. To identify other relevant impacts that may affect the exclusion analysis, we consider a number of factors including whether there are permitted conservation plans covering the species in the area such as habitat conservation plans, safe harbor agreements, or candidate conservation agreements with assurances, or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of

Tribal conservation plans and partnerships and consider the government-to-government relationship of the United States with Tribal entities. We also consider any State, local, public-health, community-interest, environmental, or social impacts that might occur because of the designation.

Tribal Lands

Several Executive Orders, Secretarial Orders, and policies guide our working relationship with Tribes. These guidance documents generally confirm our trust responsibilities to Tribes, recognize that Tribes have sovereign authority to control tribal lands, emphasize the importance of developing partnerships with tribal governments, and direct the Service to consult with Tribes on a government-to-government basis.

A joint Secretarial Order that applies to both the Service and the National Marine Fisheries Service (NMFS), Secretarial Order 3206, American Indian Tribal Rights, Federal–Tribal Trust Responsibilities, and the Endangered Species Act (June 5, 1997) (S.O. 3206), is the most comprehensive of the various guidance documents related to tribal relationships and Act implementation, and it provides the most detail directly relevant to the designation of critical habitat. In addition to the general direction discussed above, S.O. 3206 explicitly recognizes the right of Tribes to participate fully in the listing process, including designation of critical habitat. The Order also states: ''Critical habitat shall not be designated in such areas unless it is determined essential to conserve a listed species. In designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands.'' In light of this instruction, when we undertake a discretionary section 4(b)(2) exclusion analysis, we will always consider exclusions of tribal lands under section 4(b)(2) of the Act prior to finalizing a designation of critical habitat, and will give great weight to tribal concerns in analyzing the benefits of exclusion.

However, S.O. 3206 does not preclude us from designating tribal lands or waters as critical habitat, nor does it state that tribal lands or waters cannot meet the Act's definition of ''critical habitat.'' We are directed by the Act to identify areas that meet the definition of ''critical habitat'' (*i.e.,* areas occupied at the time of listing that contain the essential physical or biological features that may require special management or protection and unoccupied areas that are essential to the conservation of a species), without regard to landownership. While S.O. 3206 provides important direction, it expressly states that it does not modify the Secretaries' statutory authority.

Unit 4 (Tularosa Creek) and Unit 6 (Silver Springs)—Mescalero Apache, NM

On Mescalero Apache tribal lands, we proposed 0.65 ha (1.6 ac) of critical habitat in Unit 4, as well as 0.23 ha (0.58 ac) of critical habitat in Unit 6, all in Otero County, NM. The sites are considered occupied at the time of listing and meet the definition of critical habitat. However, the Mescalero Apache Tribe is recognized as a sovereign nation and as such is the appropriate entity to manage natural resources on Mescalero Apache tribal land. We have a productive working relationship with the Mescalero Apache Tribe and coordinated with them during the critical habitat designation process.

Benefits of Inclusion—Mescalero Apache Tribe

As discussed above under Effects of Critical Habitat Designation Section 7 Consultation, Federal agencies, in consultation with the Service, must ensure that their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of any designated critical habitat of such species. The difference in the outcomes of the jeopardy analysis and the adverse modification analysis represents the regulatory benefit and costs of critical habitat. A critical habitat designation requires Federal agencies to consult on whether their activity would destroy or adversely modify critical habitat to the point where recovery could not be achieved. Designation of critical habitat on the Mescalero Apache Tribe land of proposed Unit 4 could potentially benefit Wright's marsh thistle because that area provides habitat for the species, encompasses features essential to conservation of the species, and is occupied by the species. However, formal section 7 consultation within the proposed critical habitat area remains a rare occurrence, due to a general lack of Federal actions requiring consultations, and we do not expect this trend to change in the future. The lack of section 7 consultations results in very limited regulatory benefits for the designation of critical habitat for the Wright's marsh thistle in this portion of proposed Unit 4. Therefore, we would not expect any additional conservation benefits through the section 7 process from the inclusion of Mescalero Apache tribal land in the final critical habitat designation.

A possible benefit is that the designation of critical habitat can serve to educate the landowner and public regarding the potential conservation value of an area, and this may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. Any information about Wright's marsh thistle and its habitat that reaches a wide audience, including other parties engaged in conservation activities, would be considered valuable.

The designation of critical habitat may also be beneficial by affecting the implementation of Federal laws, such as the Clean Water Act. These laws require analysis of the potential for proposed projects to significantly affect the environment. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws.

Finally, there is the possible benefit that additional funding could be generated for habitat improvement by an area being designated as critical habitat. Some funding sources may rank a project higher if the area is designated as critical habitat. Tribes often seek additional sources of funding in order to conduct wildlife-related conservation activities. Therefore, having an area designated as critical habitat could improve the chances of receiving funding for Wright's marsh thistle habitat-related projects.

Benefits of Exclusion—Mescalero Apache Tribe

The benefits of excluding these tribal lands from designated critical habitat are significant. We have determined that the primary benefits that would be realized by foregoing the designation of critical habitat on this area include: (1) Our deference to the Tribe as a sovereign nation to develop and implement conservation and natural resource management plans for their lands and resources, which may include benefits to Wright's marsh thistle and its habitat that might not otherwise occur; (2) the continuance and strengthening of our effective working relationships with the Tribe to promote conservation of Wright's marsh and its habitat, as well as other federally listed species; and (3) promoting continued meaningful collaboration and cooperation with the Tribe in working toward recovering native plant communities, including Wright's marsh thistle habitat. We have found that fish, wildlife, and other natural resources on Tribal lands are better managed under Tribal authorities,

policies, and programs than through Federal regulations wherever possible and practicable. Additionally, this critical habitat designation may compromise our working relationship with the Tribe, which is essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of endangered and threatened species populations depend.

We have determined that the Mescalero Apache Tribe should be the governmental entity to manage and promote the conservation of the Wright's marsh thistle on their land as indicated in Secretarial Order 3206; Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2). We have determined that our working relationship with the Mescalero Apache Tribe would be better maintained if they are excluded from the designation of critical habitat for Wright's marsh thistle. We view this as a substantial benefit.

Benefits of Exclusion Outweigh the Benefits of Inclusion—Mescalero Apache Tribe

The benefits of excluding this area from critical habitat include deference to the Tribe as a sovereign nation to manage its own lands, continuing and strengthening our effective working relationships with the Tribe to promote conservation of Wright's marsh and its habitat, and continuing meaningful collaboration and cooperation in working toward recovering native plant communities, including Wright's marsh thistle habitat.

The benefits of including Mescalero Apache Tribe in the critical habitat designation are limited to the incremental benefits gained through the regulatory requirement to consult under section 7 and consideration of the need to avoid adverse modification of critical habitat, agency and educational awareness, potential additional grant funding, and the implementation of other law and regulations. However, due to the rarity of Federal actions resulting in formal section 7 consultations within the proposed critical habitat area, the benefits of a critical habitat designation are minimal. The Service's working relationship with the Tribe will be better maintained if these sites in Unit 4 and Unit 6 located on Mescalero Apache tribal lands are excluded from the designation. We view this as a substantial benefit since we are committed to cooperative relationships with Tribes for the mutual benefit of endangered and threatened species, including Wright's marsh thistle. For these reasons, we have determined that designation of critical habitat at these sites would have few, if any, additional benefits beyond those that will result from the presence of the species.

In summary, the benefits of including Mescalero Apache tribal lands in critical habitat are low and are limited to insignificant educational benefits. Educational opportunities would predominately benefit members of the Tribe rather than the general public. Also, for at least two subunits, the areas in question are located on Tribal lands which may not be accessible by the general public. They may also be inaccessible to Tribal members if the species is located on the private property of Tribal members. However, the ability of the Tribe to manage natural resources on their land without the perception of Federal Government intrusion, is a significant benefit. This philosophy is also consistent with our published policies on Native American natural resource management. The exclusion of this area will likely also provide additional benefits to the species that would not otherwise be available such as ensuring continued cooperative working relationships with the Mescalero Apache Tribe. We find that the benefits of excluding this area from critical habitat designation outweigh the benefits of including this area.

Exclusion Will Not Result in Extinction of the Species—Mescalero Apache Tribe

We have determined that exclusion of Mescalero Apache tribal lands will not result in extinction of the species. As discussed above under Effects of Critical Habitat Designation Section 7 Consultation, if a Federal action or permitting occurs, the known presence of Wright's marsh thistle would require evaluation under the jeopardy standard of section 7 of the Act, even absent the designation of critical habitat, and thus will protect the species against extinction. Furthermore, the Mescalero Apache Tribe is committed to protecting and managing Mescalero Apache tribal lands and species found on those lands according to their tribal and cultural management plans and natural resource management objectives. In short, the Mescalero Apache Tribe is committed to greater conservation measures on their land than would be available through the designation of critical habitat. Additionally, the areas we are excluding, 0.88 ha (2.18 ac), accounted for less than 1 percent of areas we are designating as critical habitat. Accordingly, we have determined that all 0.65 ha (1.6 ac) of critical habitat in Unit 4, as well as 0.23 ha (0.58 ac) of critical habitat in Unit 6, of Mescalero Apache tribal lands are excluded under subsection 4(b)(2) of the Act because the benefits of exclusion outweigh the benefits of inclusion and will not cause the extinction of the species.

Exclusions

After analyzing these potential impacts, we have determined that all 0.65 ha (1.6 ac) of critical habitat in Unit 4, as well as 0.23 ha (0.58 ac) of critical habitat in Unit 6, of Mescalero Apache tribal lands are excluded under subsection 4(b)(2) of the Act in deference to the Tribe, as a sovereign nation, to manage its own lands. During the September 29, 2020, proposed rule's public comment period, we did not receive any additional information regarding other relevant impacts to determine whether any other specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19. Therefore, we are excluding a total of 0.88 ha (2.18 ac) of Mescalero Apache tribal land from the designation, including all of Unit 4 (0.65 ha (1.6 ac)), as well as 0.23 ha (0.58 ac) of critical habitat in Unit 6.

Required Determinations

Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act—5 U.S.C. 601 et seq.

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended

by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service-sector businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this critical habitat designation. The RFA does not require evaluation of the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities will be directly regulated by this rulemaking, the Service certifies that this critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether designation will result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that the final critical habitat designation will not have a significant economic impact on a substantial number of small business entities. Therefore, a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In our economic analysis, we did not find that the designation of critical habitat will have an annual effect on the economy of $100 million or more or significantly affect energy supplies, distribution, or use due to the lack of any energy supply or distribution lines within the critical habitat designation. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act—2 U.S.C. 1501 et seq.

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon state, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to state, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act does not apply, nor does critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We have determined that this rule will not significantly or uniquely affect small governments because it would not produce a Federal mandate of $100 million or greater in any year; that is, it

is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities. Consequently, we have determined that the critical habitat designation would not significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required. We did notify the City of Santa Rosa when we proposed to designate critical habitat for the Wright's marsh thistle, and we invited their comments on the proposed critical habitat designation with regard to any potential effects. We did not receive any comments from the City of Santa Rosa; therefore, we made no changes to this rule.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for Wright's marsh thistle in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed, and it concludes that this designation of critical habitat for Wright's marsh thistle will not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this final critical habitat designation with, appropriate State resource agencies in New Mexico. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule will not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) will be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the species. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995—44 U.S.C. 3501 et seq.

This rule does not contain information on collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor, and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act—42 U.S.C. 4321 et seq.

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, when the range of the species includes States within the Tenth Circuit, such as that of the Wright's marsh thistle, under the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we undertake a NEPA analysis for critical habitat designation. During the public comment period we provided a draft Environmental Assessment and invited the public to comment on the extent to which this rule may have a significant impact on the human environment or fall within one of the categorical exclusions for actions that have no individual or cumulative effect on the quality of the human environment. We then finalized the Environmental Assessment and determined that the designation of critical habitat for Wright's marsh thistle does not constitute a major Federal action significantly affecting the quality of the human environment under the meaning of Section 102(2)(c) of the NEPA (1969, as amended). Therefore, the Service made a Finding of No Significant Impact as allowed by NEPA regulation and supported by Council on Environmental Quality guidance.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations

with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

The Mescalero Apache Tribe is the main Tribe whose lands and trust resources may be affected by this rule. We sent a notification letter to the Mescalero Apache Tribe on April 6, 2014, describing the exclusion process under section 4(b)(2) of the Act, we engaged in conversations with the Tribe about the final designation to the extent possible without disclosing pre-decisional information via requests for additional information in September 2016 and January 2018, and provided notice of the publication of the 2020 proposed rule. There may be some other Tribes with trust resources in the area, but we have no specific documentation of this. Using the criteria described above under Criteria Used To Identify Critical Habitat, we determined that 0.88 ha (2.18 ac) of Mescalero Apache lands met the definition of critical habitat. After considering impacts of the critical habitat designation under section 4(b)(2) of the Act, we are excluding the 0.88 ha (2.18 ac) of Mescalero Apache lands from the final critical habitat designation.

References Cited

A complete list of references cited in this final rule is available on the internet at *http://www.regulations.gov* and upon request from the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the New Mexico Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.12 in paragraph (h) by adding an entry for ''*Cirsium wrightii*'' to the List of Endangered and Threatened Plants in alphabetical order under FLOWERING PLANTS to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
FLOWERING PLANTS				
*	*	*	*	*
Cirsium wrightii	Wright's marsh thistle	Wherever found	T	88 FR [INSERT **FEDERAL REGISTER** PAGE WHERE THE DOCUMENT BEGINS], 4/25/2023; 50 CFR 17.73(c); [4d] 50 CFR 17.96(a).[CH]
*	*	*	*	*

■ 3. Amend § 17.73 by adding paragraph (c) to read as follows:

§ 17.73 Special rules—flowering plants.

* * * * *

(c) *Cirsium wrightii* (Wright's marsh thistle).

(1) *Prohibitions.* The following prohibitions that apply to endangered plants also apply to the Wright's marsh thistle. Except as provided under paragraph (c)(2) of this section, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Remove and reduce to possession the species from areas under Federal jurisdiction, as set forth at § 17.61(c)(1) for endangered plants.

(ii) Maliciously damage or destroy the species on any areas under Federal jurisdiction, or remove, cut, dig up, or damage or destroy the species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law, as set forth at section 9(a)(2)(B) of the Act.

(2) *Exceptions from prohibitions.* The following exceptions from prohibitions apply to the Wright's marsh thistle:

(i) The prohibitions described in paragraph (c)(1) of this section do not apply to activities conducted as authorized by a permit issued in accordance with the provisions set forth at § 17.72.

(ii) Any employee or agent of the Service or of a State conservation agency that is operating a conservation program pursuant to the terms of a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by that agency for such purposes, may, when acting in the course of official duties, remove and reduce to possession from areas under Federal jurisdiction members of the Wright's marsh thistle that are covered by an approved cooperative agreement to carry out conservation programs.

* * * * *

■ 4. Amend § 17.96 in paragraph (a) by adding an entry for ''Family Asteraceae: *Cirsium wrightii* (Wright's marsh thistle)'' in alphabetical order to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Asteraceae: *Cirsium wrightii* (Wright's marsh thistle)

(1) Critical habitat units are depicted for Chavez, Eddy, Guadalupe, Otero, and Socorro Counties, New Mexico, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of Wright's marsh thistle consist of the following components:

(i) Water-saturated soils with surface or subsurface water flow that allows permanent root saturation and seed germination;

(ii) Alkaline soils;

(iii) Full sunlight; and

(iv) Diverse floral communities to attract pollinators.

(3) Critical habitat does not include humanmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on May 25, 2023.

(4) Data layers defining map units were created using the latest imagery available through Esri (*https://www.esri.com/en-us/home*). The source is DigitalGlobe, and the year of the imagery was 2016. Critical habitat units were then mapped using ArcGIS ArcMap 10.4. All data are in North America Albers Equal Area Conic projection, Datum North American 1983. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at *https://www.fws.gov/office/new-mexico-ecological-services,* at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2018–0071, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map follows:

Figure 1 to Family Asteraceae: *Cirsium wrightii* (Wright's marsh thistle) paragraph (5)

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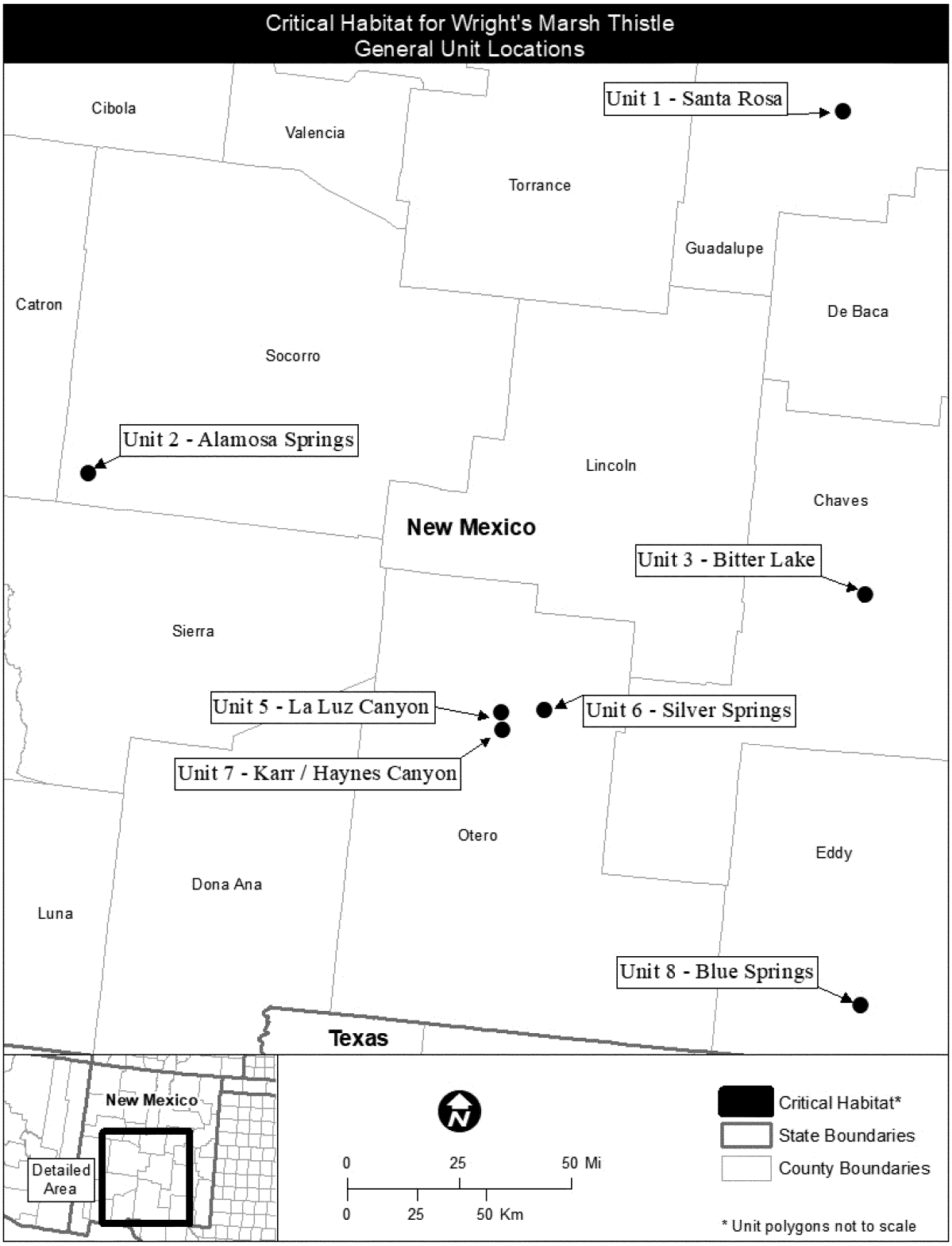


(6) Unit 1: Santa Rosa, Guadalupe County, New Mexico.

(i) Unit 1 consists of 26.6 hectares (ha) (65.7 acres (ac)) in Guadalupe County, New Mexico, and is composed of lands in State (12.65 ha (31.2 ac)), City of Santa Rosa (9.88 ha (24.4 ac)), and private (4.09 ha (10.16 ac)) ownership.

(ii) Maps of Unit 1 follow:

Figure 2 to Family Asteraceae: *Cirsium wrightii* (Wright's marsh thistle) paragraph (6)(ii)

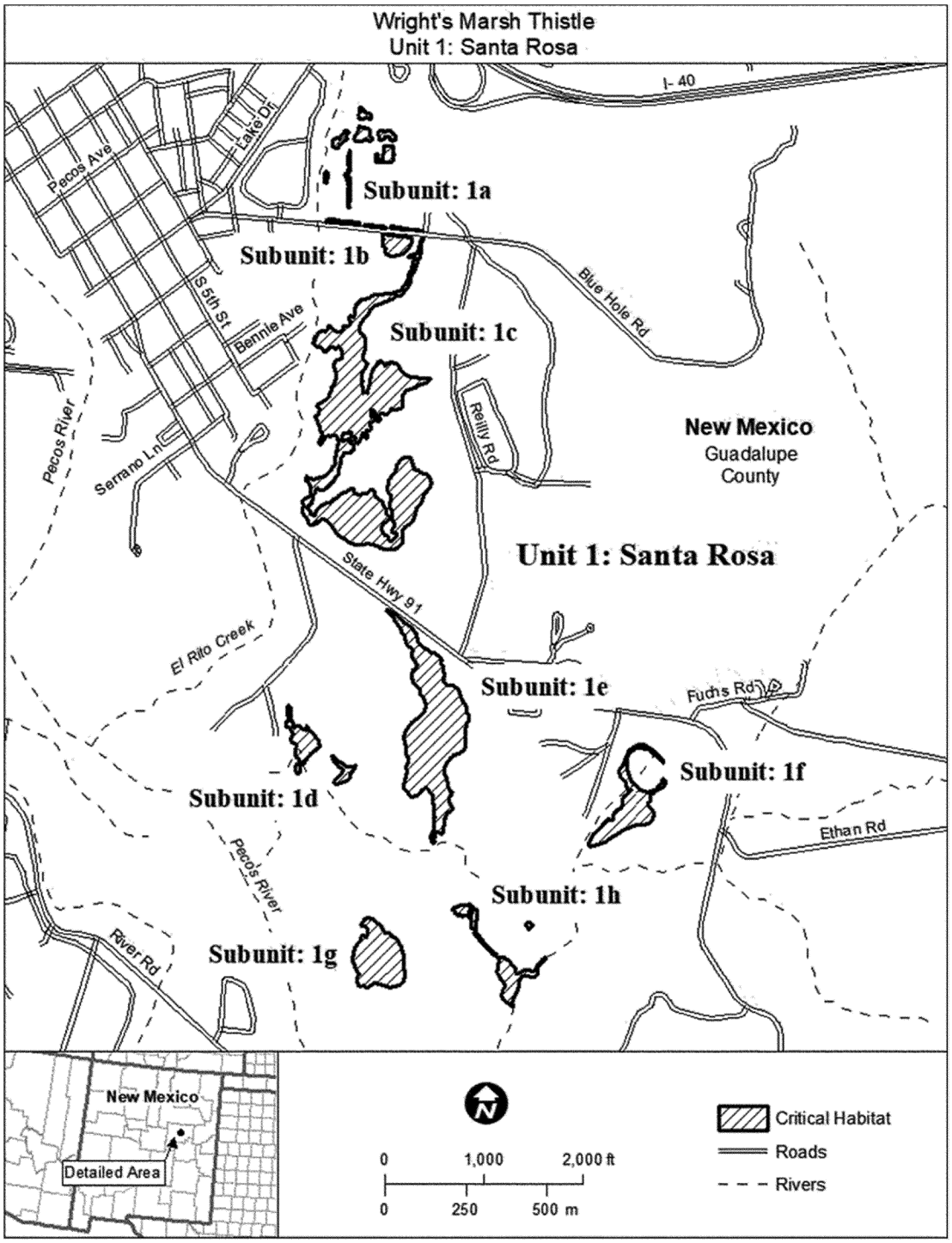


Figure 3 to Family Asteraceae: *Cirsium wrightii* (Wright's marsh thistle) paragraph (6)(ii)

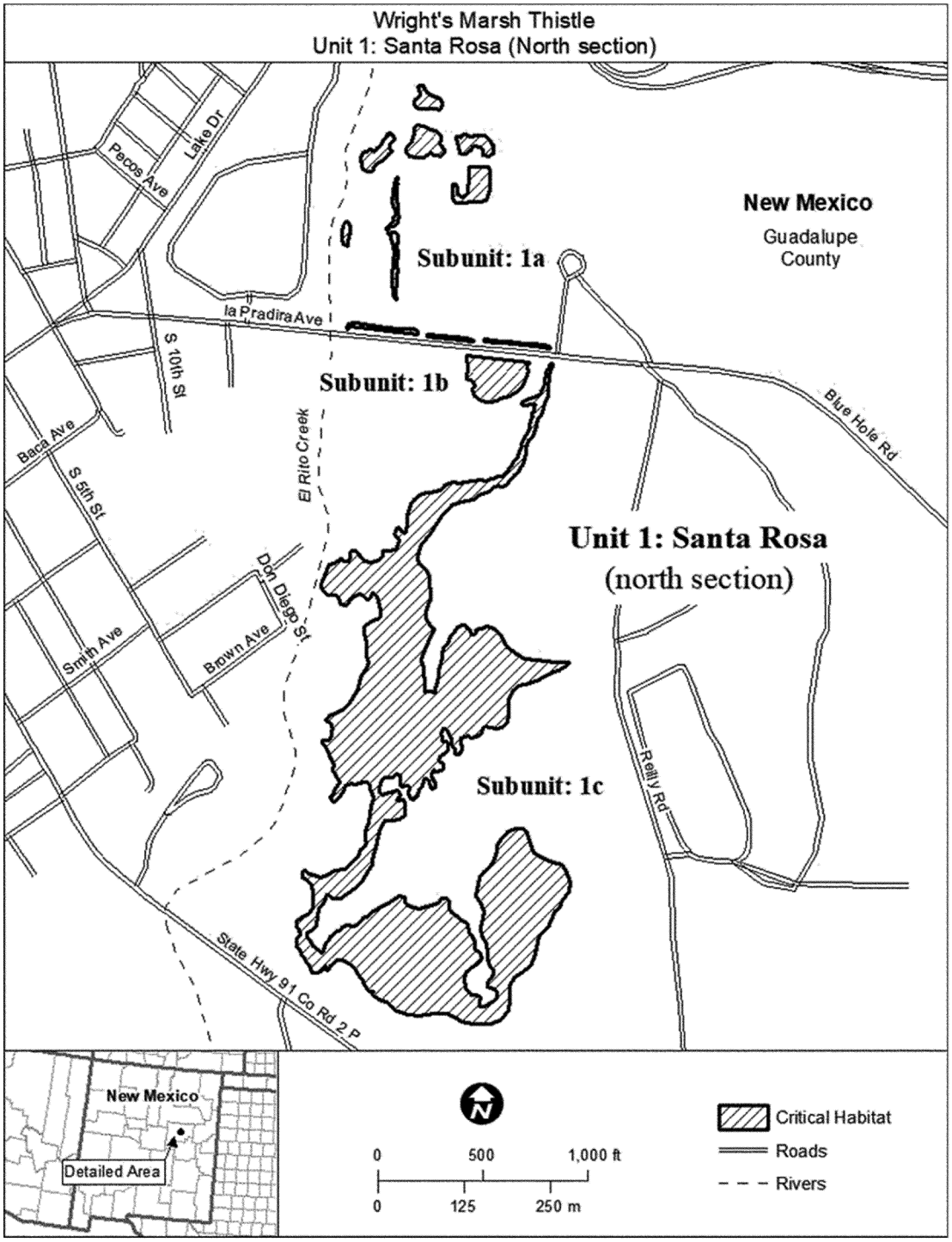


Figure 4 to Family Asteraceae: *Cirsium wrightii* (Wright's marsh thistle) paragraph (6)(ii)

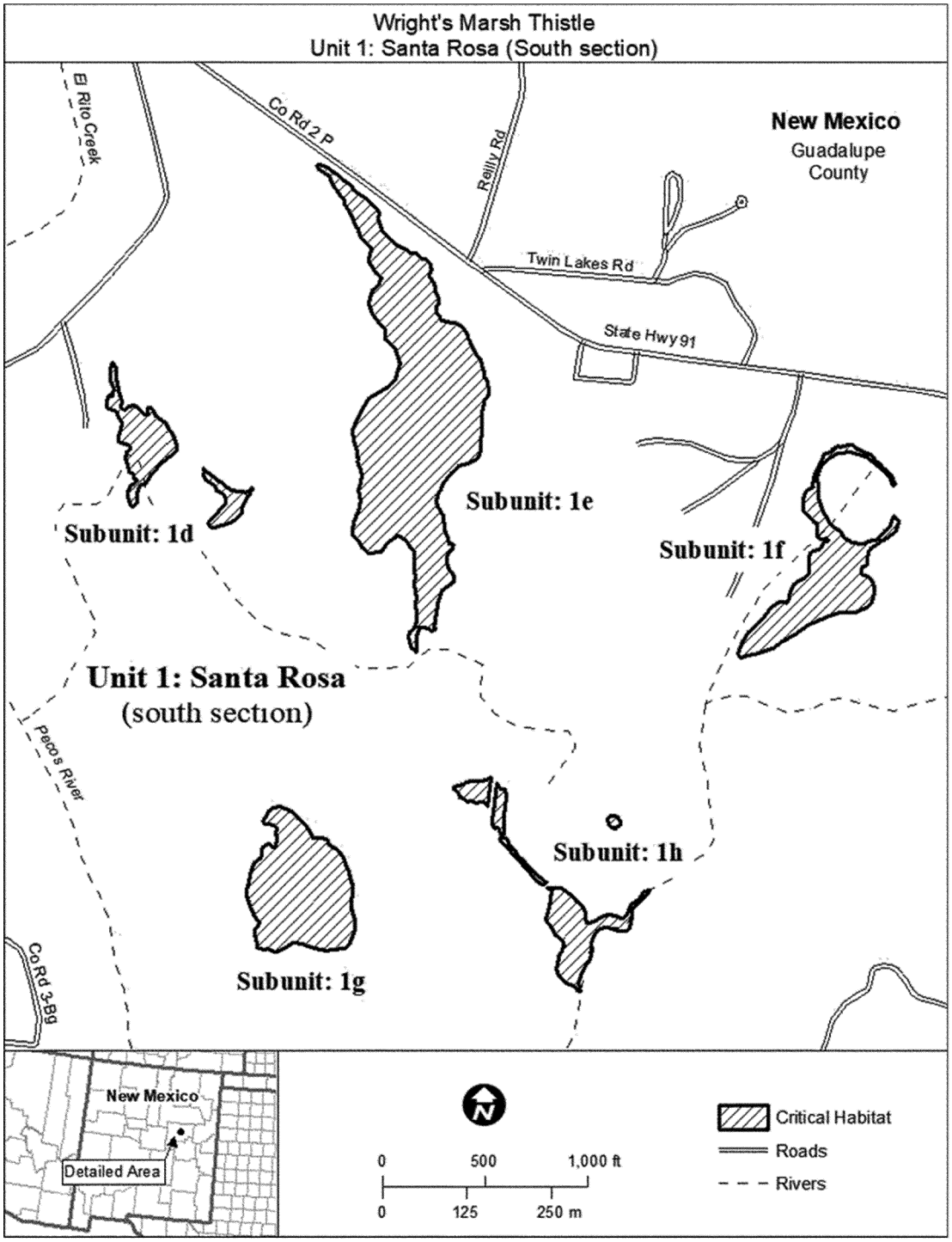
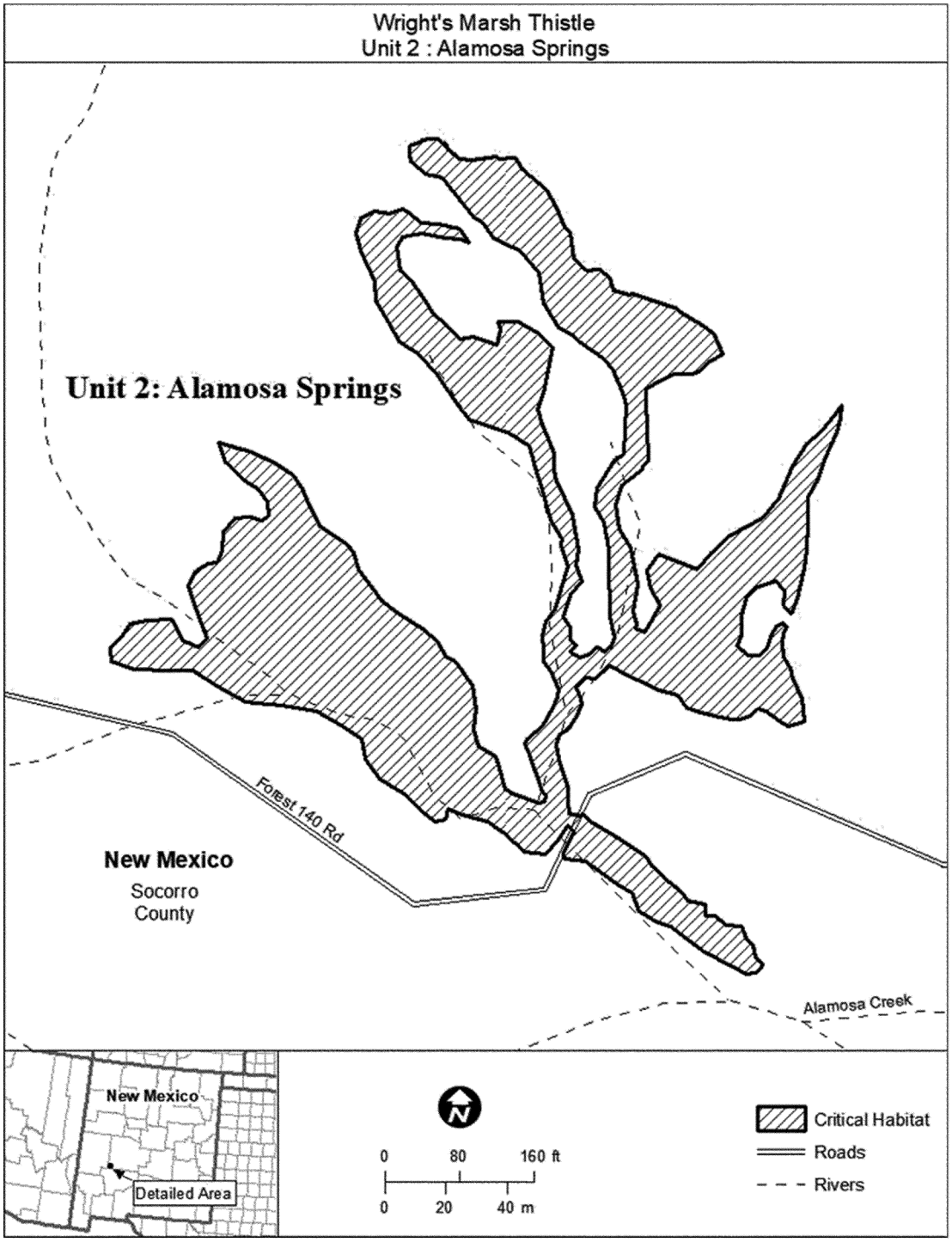


Figure 5 to Family Asteraceae: *Cirsium wrightii* (Wright's marsh thistle) paragraph (7)(ii)

(7) Unit 2: Alamosa Springs, Socorro County, New Mexico.

(i) Unit 2 consists of 1.58 ha (3.9 ac) in Socorro County, New Mexico, and is composed of lands in private ownership.

(ii) Map of Unit 2 follows:

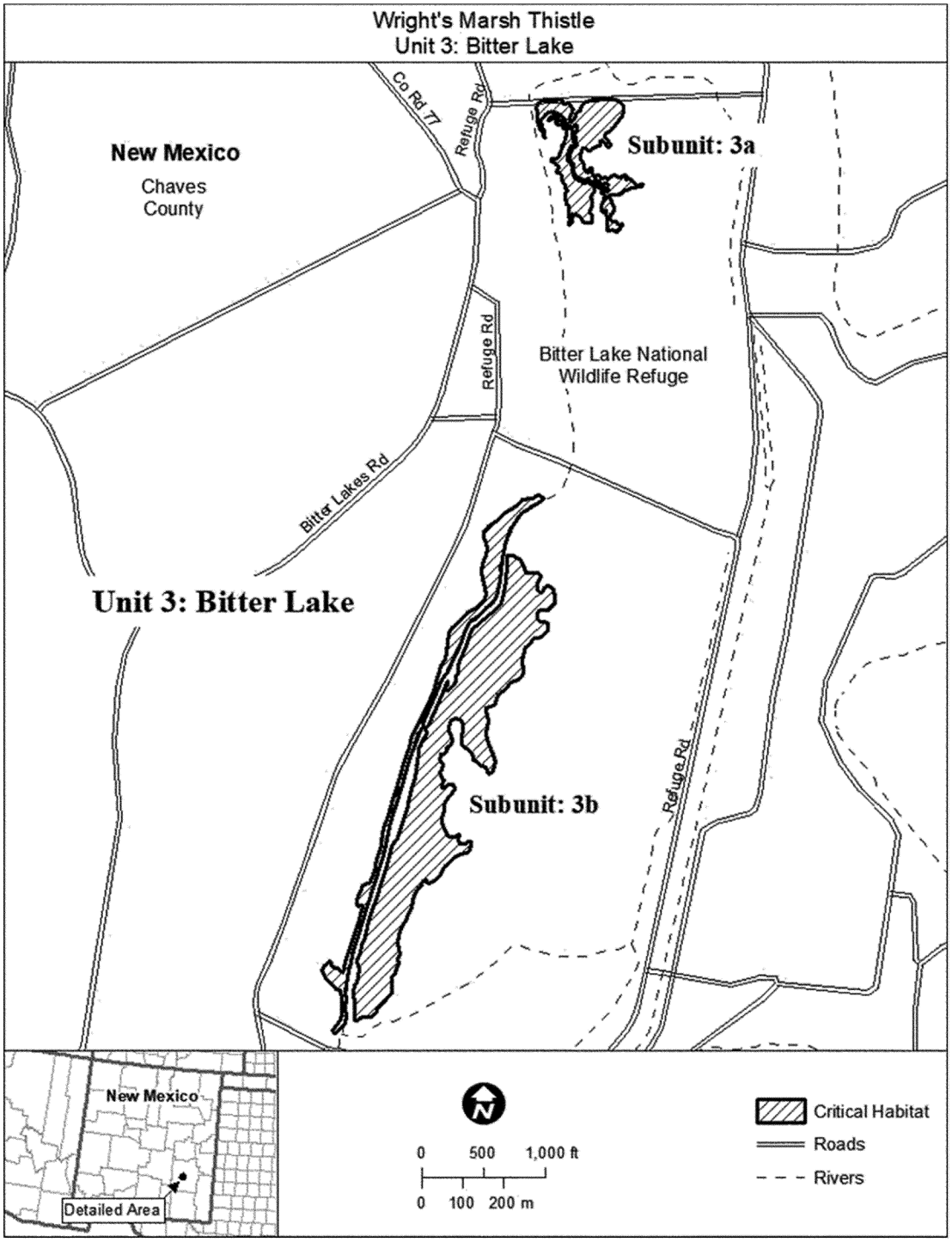


(8) Unit 3: Bitter Lake, Chaves County, New Mexico.

(i) Unit 3 consists of 19.0 ha (47.0 ac) in Chaves County, New Mexico, and is composed of lands under Federal management, specifically the U.S. Fish and Wildlife Service's Bitter Lake National Wildlife Refuge.

(ii) Map of Unit 3 follows:

Figure 6 to Family Asteraceae: *Cirsium wrightii* (Wright's marsh thistle) paragraph (8)(ii)



(9) Unit 4 has been excluded from this critical habitat designation.

(10) Unit 5: La Luz Canyon, Otero County, New Mexico.

(i) Unit 5 consists of 0.01 ha (0.03 ac) in Otero County, New Mexico, and is composed of lands under Federal management, specifically the U.S. Forest Service's Lincoln National Forest.

(ii) Map of Unit 5 follows:

Figure 7 to Family Asteraceae: *Cirsium wrightii* (Wright's marsh thistle) paragraph (10)(ii)

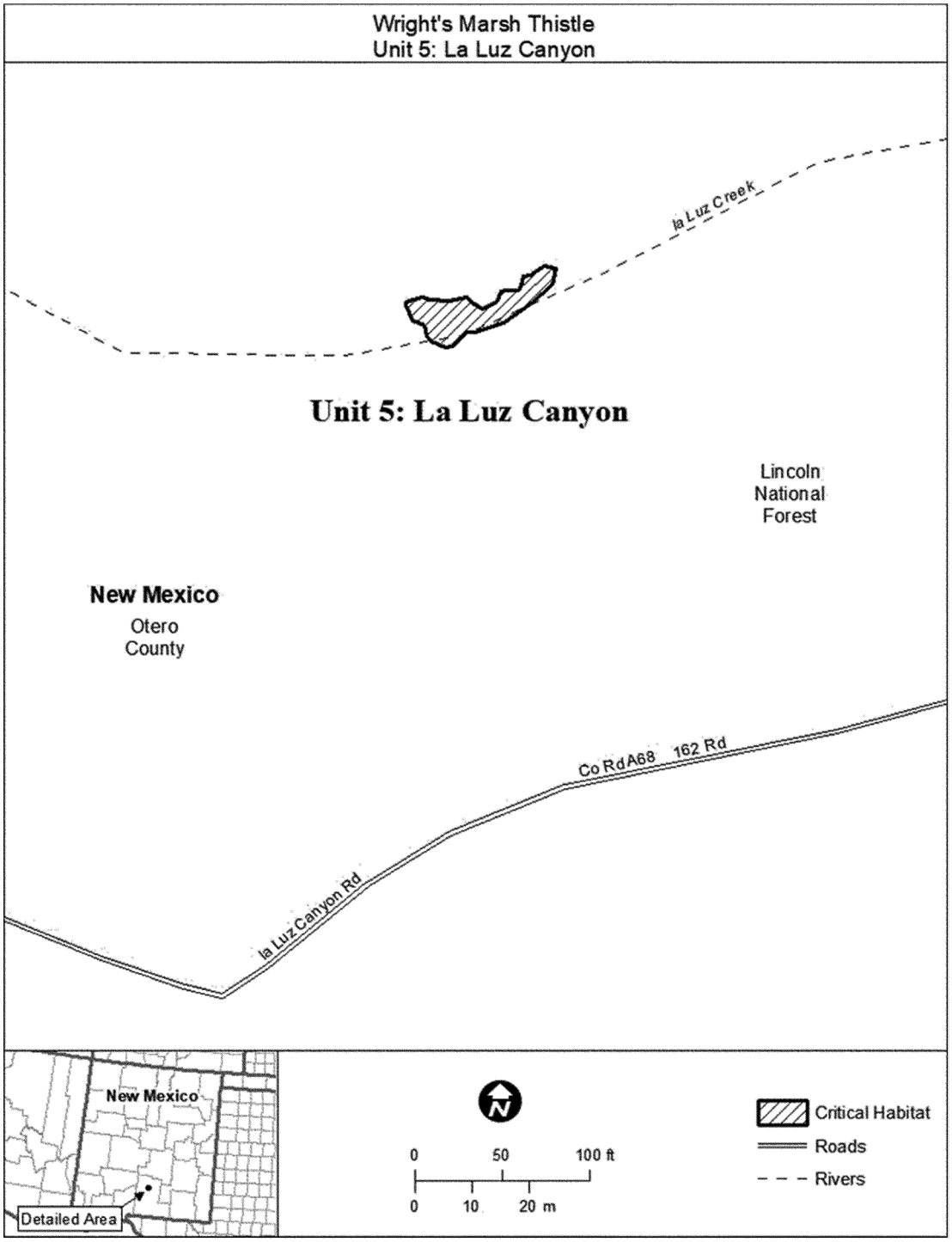


Figure 8 to Family Asteraceae: *Cirsium wrightii* (Wright's marsh thistle) paragraph (11)(ii)

(11) Unit 6: Silver Springs, Otero County, New Mexico.

(i) Unit 6 consists of 0.38 ha (0.95 ac) in Otero County, New Mexico, and is composed of lands under Federal management, specifically the U.S. Forest Service's Lincoln National Forest.

(ii) Map of Unit 6 follows:

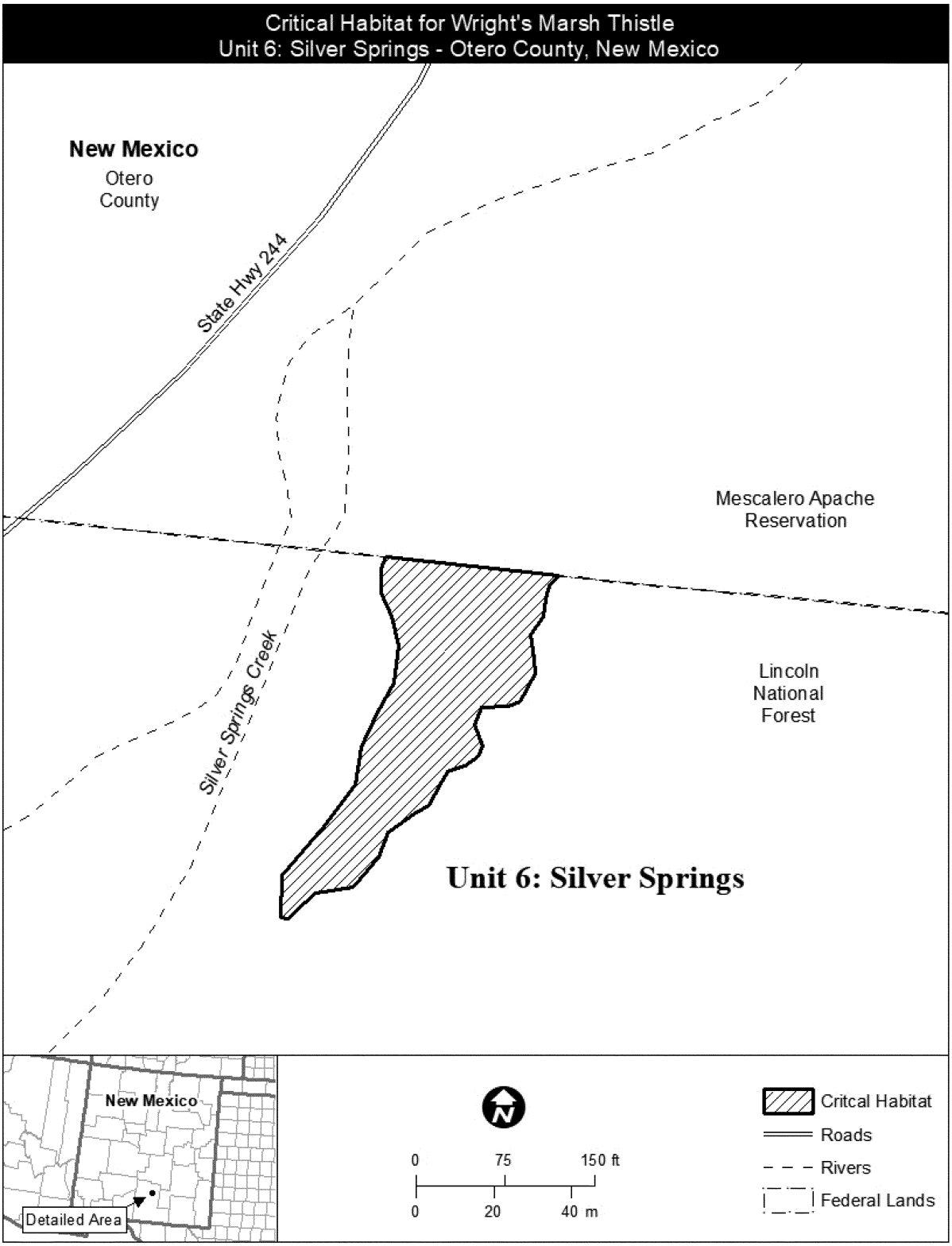


Figure 9 to Family Asteraceae: *Cirsium wrightii* (Wright's marsh thistle) paragraph (12)(ii)

(12) Unit 7: Karr/Haynes Canyon, Otero County, New Mexico.

(i) Unit 7 consists of 1.79 ha (4.42 ac) in Otero County, New Mexico, and is composed of lands in private ownership.

(ii) Map of Unit 7 follows:

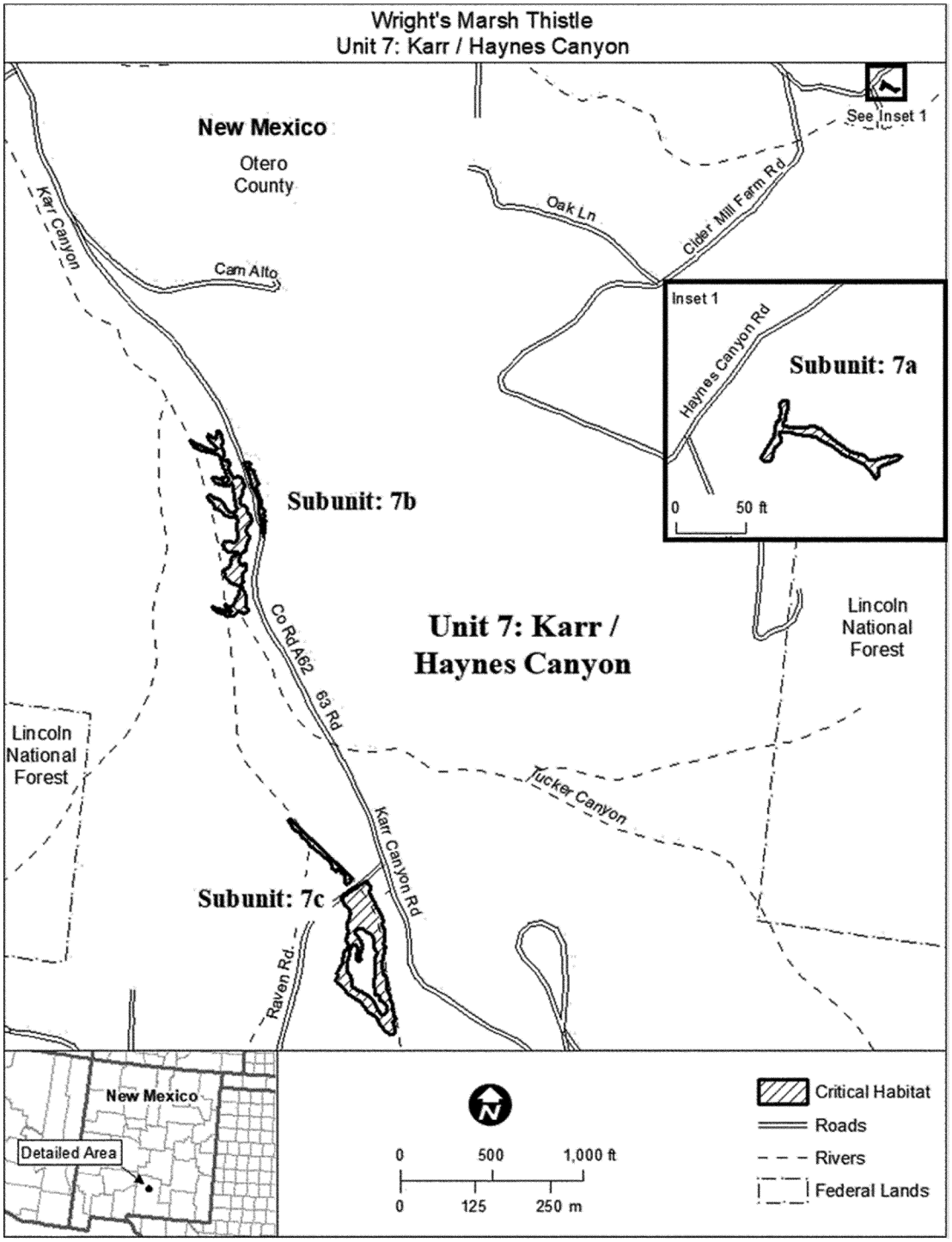
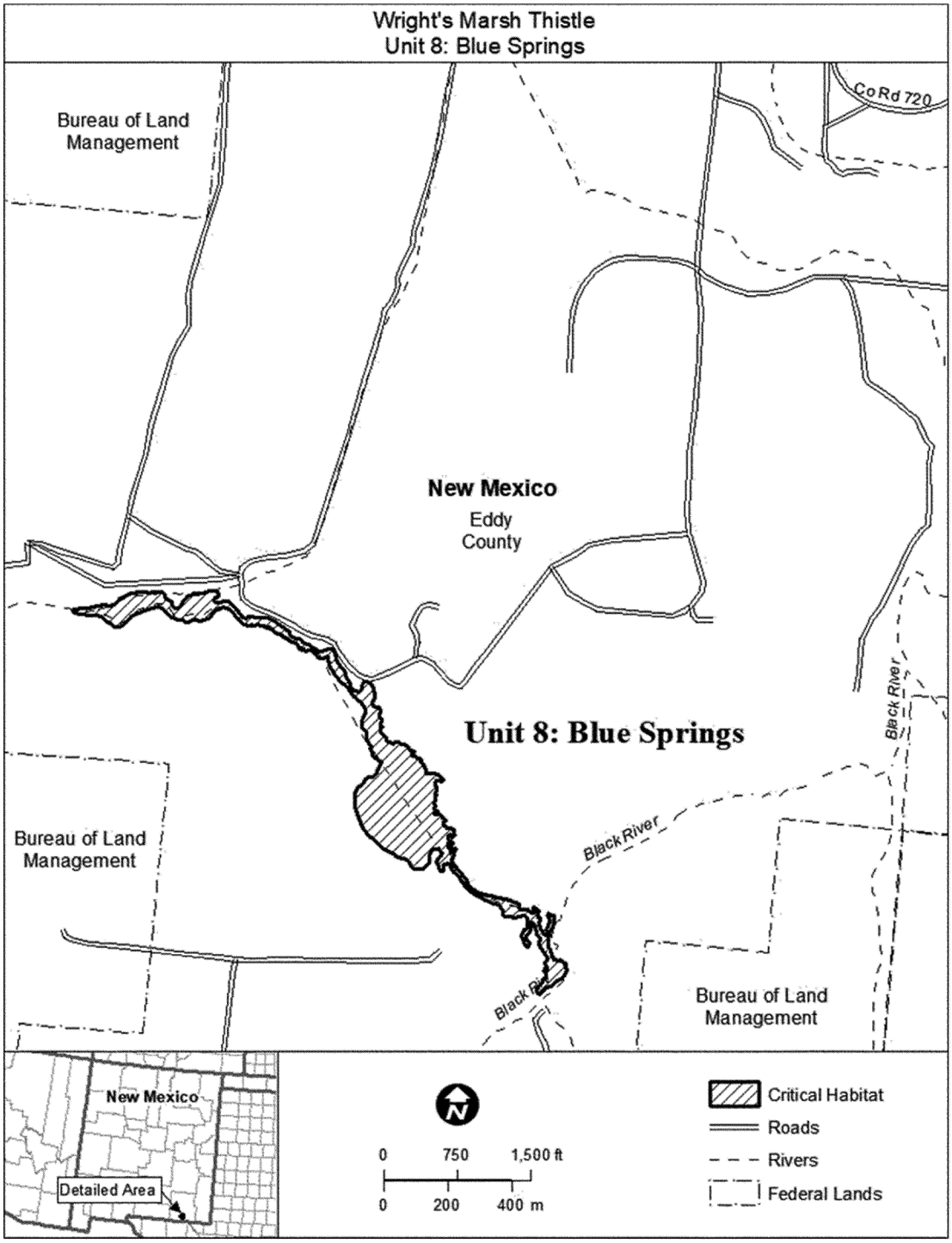


Figure 10 to Family Asteraceae: *Cirsium wrightii* (Wright's marsh thistle) paragraph (13)(ii)

(13) Unit 8: Blue Springs, Eddy County, New Mexico.

(i) Unit 8 consists of 14.04 ha (34.7 ac) in Eddy County, New Mexico, and is composed of lands in private ownership.

(ii) Map of Unit 8 follows:



* * * * *

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–08565 Filed 4–24–23; 8:45 am]

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